QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

April 1, 1951

Through June 30, 1951

Volume No. 63

TO THE STATE, COUNTY, AND MUNICIPAL OFFICIALS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1951, through June 30, 1951, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State; and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

SI GARRETT,

Attorney General.

Attorney General:

Si Garrett

Assistant Attorneys General:

J. W. Arbuthnot
Lee Edward Barton
A. A. Carmichael
Thomas M. Galloway
Wallace L. Johnson
William N. McQueen
M. Roland Nachman
Thomas F. Parker
James L. Screws
Robert Straub
Bernard F. Sykes

Assistant Attorney General assigned to the Department of Agriculture and Industries:
George O. Miller, Jr.

Assistant Attorney General assigned to the Department of Conservation:

A. J. Harris

Assistant Attorney General assigned to the Department of Examiner of Public Accounts:

James T. Hardin

Assistant Attorney General assigned to the Department of Finance:

Randolph G. Lurie

Assistant Attorneys General assigned to the Department of Revenue:

H. Grady Tiller
Willard W. Livingston
William H. Burton, Jr.

Confidential Secretary:

Mrs. Dorothy G. Johnson

OPINIONS

April 3, 1951

Hon. David W. Crosland,

Tax Assessor,

Montgomery County,

Montgomery, Alabama

Taxation—Corporations—Assessments—Tax Assessors.

Under the facts stated, the assessment by the tax assessor of a building against the individual taxpayer (former owner) should be cancelled as an error, and the property assessed against the corporation (owner of record). The assessed value of the property may then be deducted from the assessed value of the shares of the corporation, as provided in Title 51, Section 25, Code of Alabama 1940.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion, bearing date of January 3, 1951, is as follows:

"Robert F. Henry owned building and lot 523 Bell Street assessed for $7000.00 up until June 30th, 1949. On that date he sold the property to the Robert F. Henry Tile Company, Inc., a domestic corporation of Montgomery County, said deed being recorded in Deed Book 303 page 50 in the Probate Office.

"The Robert F. Henry Tile Company, Inc., made their return for 1950 on December 31st, 1949. The real estate was not transfered on the tax assessor's books from Henry as an individual to the return of the corporation even though the Corporation was the owner of the record, but was assessed by the tax assessor under authority of Act 91, Regular session 1949, to Robert F. Henry.

"The balance sheet from which the value of the shares was determined included this real estate in its assets and the value of the shares was substantially increased because of it.

"Section 25, Title 51, Alabama Code, provides that the correct assessed value of the real and personal property shall be deducted from the assessed value of all the shares of a Corporation, unless the corporation omits any property it owns from its return. Act 91, Regular session 1949, provides that after October 1, 1949, the tax assessor shall have the right and authority to assess all real estate to the party last assessing the same or to the owner of record; that the failure to assess same to the true owner shall not invalidate the assessment. Said act further provides—'that it shall be the duty of any person who purchases real estate prior to October 1st—to report such purchase to and assess said property with the tax assessor—' No penalty is provided for failure to do this.

"The assessed value of the shares of this Corporation for 1950 was $32,400.00 and a charge was made to the tax collector against the corpora-

tion without deducting the $7000.00 for which the real estate was assessed. Another charge was made to the collector on the $7000.00 in the name of Robert F. Henry who was not the owner of record. The Corporation will pay the charge on the realty in Henry's name.

"My question is should the tax value of $7000.00 against Robert F. Henry, individually, have been deducted from the tax value of $32,400.00 on the shares of the Robert F. Henry Tile Company?"

It is my opinion that your inquiry should be answered in the affirmative.

Under the provisions of Act No. 91, General and Local Acts 1949, page 115, you, as Tax Assessor of Montgomery County, could have properly assessed the property in question against the Robert F. Henry Tile Company, Inc., the owner of such property.

The pertinent part of Act No. 91, supra, reads as follows:

"Section 2. The tax assessor shall have the right and authority after October 1st, 1949 and annually thereafter to assess all real estate, together with the improvements thereon and all furniture and household goods used in and about the curtilage of a home **to the party last assessing the same or to the owner of record.** The failure of the tax assessor to assess said property to the true owner shall not invalidate the assessment." (Emphasis supplied.)

While it is true that Act No. 91, supra, places a duty upon the purchaser of real estate purchased prior to October 1 of any tax year, and who owns said real estate on that date, to report such purchase to and assess said property with the tax assessor, no penalty is provided for failure to do so. Opinion to Hon. Bert E. Thomas, Tax Assessor, Mobile County, dated March 30, 1951 (Ms.). If the assessed value of the property in question may not be deducted from the assessed value of the shares of the corporation, it is because of the following proviso in Title 51, Section 25, Code of Alabama 1940:

"Provided, however, that if any property owned by a corporation which property is subject to taxation in this state is omitted from the tax return filed by said corporation, the same shall be assessed as an escape item or items of taxation in the same manner as escaped property of individuals and the value of such omitted property shall not be deducted from the value of shares of stock of the corporation as assessed for taxation." "

The obvious purpose of this provision is to prevent property owned by a corporation from escaping taxation, and to penalize any corporation which attempts to evade the payment of taxes on its property. Here, it is abundantly clear that the property in question has not escaped taxation, for the reason that it has been assessed by the tax assessor, under the provisions of Act No. 91, supra, and may not now again be assessed as an escape. (Even though the assessment was made to the individual taxpayer (former owner) instead of to the corporation (owner of record), this fact does not invalidate the assessment or relieve the property from liability for the payment of taxes so assessed. See opinion to Hon. Bert E. Thomas, supra.) Further, it is equally clear that the corporation has made no attempt to evade the payment of the taxes on this property, since it has made no return from which it omitted the property and the property was included in its balance sheet from which the assessed value of its shares was determined.

Without deciding whether or not the above quoted proviso from Title 51, Section 25, Code of Alabama 1940, ever has any operation in regard to the real property of a corporation assessed by the tax assessor under the provisions of Act No. 91, supra, I am convinced that it has no operation here.

If you, as Tax Assessor of Montgomery County, had assessed the property in question to the corporation (the owner of record) instead of the individual taxpayer (former owner), as you had the right and authority to do, there would be no question about the deduction of the assessed value of this property from the assessed value of the shares of the corporation.

Consequently, it is my opinion that, under the existing facts, the assessment by you of the property in question to the individual taxpayer (former owner) should be treated as an error, which you should proceed to correct by assessing the same to the corporation (owner of record). This being done, it follows as to a matter of course that the assessed value of the property may then be deducted from the assessed value of the shares of the corporation, as provided in Title 51, Section 25, Code of Alabama 1940.

Yours very truly,

SI GARRETT,

Attorney General.

April 18, 1951

Hon. A. C. Shelton

Superintendent

Board of Education

Calhoun County

Anniston, Alabama

Schools—State Board of Adjustment—County Boards of Education.

1. A county board of education is not liable in tort for the negligent act of its servant or employee.

2. Those injured by the negligent act of an employee of the county board of education may claim their damages before the State Board of Adjustment. Title 55, Section 334, Code of Alabama 1940.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of March 10, 1951, is as follows:

"A local automobile concern is furnishing to one of our high schools a new car which is used in teaching driver training to high school stud-

ents. The car was turned over to the instructor at the beginning of school in the fall and it was used during the school day for driver training classes and stored in our school bus garage at night.

"Due to neglect on the part of someone employed by the Board of Education the anti-freeze was too low and the block burst. The cost of repairs on the car amounts to approximately $200.

"The local dealer does not charge us anything for the use of the car. It is turned back to him at the end of the year and another new one is furnished the next year.

"Is it legal for the County Board of Education to pay for the repairs on this car that is not owned by us, but that is being used in driver training classes?"

It has heretofore been held that a county board of education cannot be sued for the negligent act of its servant. **Hawkins v. State Board of Adjustment,** 242 Ala. 547, 7 So. 2d 775. The board, however, can be sued in certain instances. See Alabama Digest, Schools, Key No. 114.

It appears to me that the claim or obligation as outlined in your inquiry is one arising from a negligent act of an employee of the county board of education. The **Hawkins** case, supra, would prevent a suit by the automobile owner against the board of education for the recovery of his damages. However, in order that such claim may be paid, which, according to the facts in your inquiry, appears to be a just and moral obligation, if not a legal obligation, of the county board of education, the claimant should apply to the State Board of Adjustment for his damages. Title 55, Section 334, Code of Alabama 1940; **Hawkins v. State Board of Adjustment, supra.** On such application, the board may make an award to the owner of the automobile for the damages in a legal manner, and the award may be paid from the funds of the county board of education.

Yours very truly,

SI GARRETT

Attorney General.

April 18, 1951

Hon. Henry W. Smith

President

Board of Revenue

Etowah County

Gadsden, Alabama

Etowah County—Counties—Roads and Bridges.

The Board of Revenue of Etowah County, created by Act No. 250, Local Acts 1947, page 181, may purchase and maintain automobiles for members of said board for use in the performance of their official duties in respect to roads and bridges of the county, or in the performance of other official duties.

Opinion by Asistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of March 3, 1951, is as follows:

"As President of the Etowah County Board of Revenue and under authority of Title 55, Section 240 of the 1940 Code of Alabama and amendments thereto, I respectfully request an opinion of you on the following question:

"Can the Board of Revenue of Etowah County legally purchase, with County funds, an automobile for each of the County Commissioners, same to be used by the County Commissioners in the performance of their duties as such Commissioners?

"Your attention is called to the local act governing the Board of Revenue of Etowah County as found in the 1947 Local Acts, page 181, et seq.

"Your usual prompt attention to matters of this nature will be greatly appreciated."

You are advised that Etowah County may purchase an automobile for the use of each of the members of the Board of Revenue of Etowah County, which automobile may be used in inspecting the public roads of the county, or in the performance of any other official duty.

By Act No. 250, Local Acts 1947, page 181, the existing Board of Revenue of Etowah County was abolished and there was established a new Board of Revenue for Etowah County. This board consists of a president and two associate members. The jurisdiction powers, and duties of the board under the Local Act, supra, are the same as are those of county governing bodies under the general law, except as otherwise provided in said Act (See Section 4.)

In the case of **Ensley Motor Co. v. O'Rear**, 196 Ala. 481, 71 So. 704, it was held that the county could purchase and maintain an automobile for use in maintaining and inspecting the roads and bridges of the county. I see nothing

in the Local Act, supra, which would curtail the powers of the Etowah County Board of Revenue in this respect. It is true that Section 7 of the Local Act, supra, provides that where any member of the board shall use his privately-owned automobile in and about his duties, the county at its expense shall furnish gasoline and motor oil not to exceed a certain amount per month. I do not believe that this section is inconsistent with the general power of the Board of Revenue of Etowah County to purchase automobiles for the use of the members of said board in inspecting and maintaining the roads, or for use in performance of any other official duties. While some members of the board may use their privately owned automobiles and obtain gasoline and oil at the expense of the county, the board of revenue may deem it expedient to purchase automobiles for the use of the members in performing their duties in inspecting and maintaining the public roads and bridges of the county, or other official duties. Of course, the automobiles, if so purchased, would be the property of the county, and for official use only.

Yours very truly,

SI GARRETT

Attorney General.

April 20, 1951

Hon. Edgar Underwood

Judge of Probate

Franklin County

Russellville, Alabama

Counties—Gasoline Tax—Warrants—Franklin County.

The provisions of Act No. 16, Local Acts, Extra Session, 1936, page 14, authorizing and empowering the governing body of Franklin County to issue certain gasoline excise tax anticipation warrants for a special purpose, and maturing within a limited time, does not affect the authority of said county to otherwise issue legal gasoline excise tax warrants under the general law.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of February 21, 1951, is as follows:

"Franklin County has heretofore issued its gasoline excise tax anticipation interest bearing warrants, evidenced by warrants, pledging not exceeding one-third of the gasoline excise tax to be received by the county from the state, with attached interest coupons, which warrants were made payable on the 15th day of the calendar month and the last warrant of each issue has been made payable not exceeding four years from

date of issue. These warrants conformed to the general law at the time of issue and at the same time cleared the inhibitions of Local Act No. 16, page 14 of Local Acts, Extra Session 1936.

"The Court of County Revenue of Franklin County, Alabama has resolved to issue and sell similar gasoline tax anticipation interest bearing warrants for a period of ten years under the general law, to be payable on the 15th day of the calendar month and not to exceed one-third of the anticipated gasoline excise tax to be received by the county from the state during such period. Please advise me if such warrants can be legally issued by said county. I call your attention to said Local Act and particularly the following provision of Section 2 thereof: 'The due date of no warrant shall be more than four years from the date of issue,' also Section 5 as follows: 'All laws, both general, special or local in conflict with the provisions of this Act, be, and the same are hereby repealed, and this Act shall take effect immediately on its passage and approval by the Governor. Approved March 17, 1936.'"

In answer to your inquiry, I am of the opinion that the provisions of Act No. 16, Local Acts, Extra Session, 1936, page 14, do not affect the authority of Franklin County to otherwise issue legal gasoline tax anticipation interest bearing warrants under the general law.

Act No. 16, supra, authorized and empowered the governing body of Franklin County to borrow money and to pledge as a security for such loan all or any part of future monthly installments in its share of the gasoline excise tax levied and collected by the State solely for the construction and repair of State or State and Federal Highways in the county. The due date of interest bearing warrants issued as evidence of such indebtedness was limited to four years from date of issue. This act, in my judgement, was cumulative of the then existing provisions of the general law, relating to the issuance of gasoline excise tax anticipation warrants by counties, and not a restriction or limitation thereof. Both acts had a field of operation. Likewise, the operation of Act No. 16, supra, is not affected by non-conflicting subsequent legislation (since the enactment of the local act), concerning the county's power and authority to issue gasoline excise tax anticipation warrants. Both may now have a field of operation.—Cf. Quarterly Report of Attorney General, Vol. 8, page 134.

In connection with the issuance of gasoline excise tax anticipation warrants by counties under the general law, your attention is invited to the cases of **Cochran v. Marshall County,** 242 Ala. 314, 6 So. 2d. 489, and **Bullock County v. Sherlock,** 242 Ala. 262, 5 So. 2d. 800, and authorities cited therein.

Yours very truly,

SI GARRETT

Attorney General

April 20, 1951

Hon. L. B. Stephens

Administrative Assistant

State Board of Pardons and Paroles

CAPITOL

Pardons and Paroles—Records.

The filing, in loose-leaf book, of copies of the certificates of remissions of fines and forfeitures and the granting of pardons, which certificates incorporate by reference the official report of the parole officer, is a sufficient compliance with the provisions of Title 42, Section 16, Code of Alabama 1940, requiring entry in a book of the reasons in each case on which the State Board of Pardons and Paroles acted in the remission of fines and forfeitures and the granting of pardons.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of March 19, 1951, is as follows:

"Section 16, Title 42 of the Code of Alabama, 1940, reads in part as follows:

"'----It shall cause to be entered in a book kept for that purpose the reasons in each case, and must preserve on file all documents on which it acted in the remission of fines and forfeitures and the granting of pardons.----'

"The State Board of Pardons and Paroles in compliance with the above statute has adopted a loose-leaf book in which is filed a copy of certificates of remission of fines and forfeitures and pardons. In the body of each of the certificates of pardon is set out the reason for granting each case as follows:

"'And it further appearing to the Board from the official report of the parole officer which is a part of the record in this case, and with no further information to the contrary, that John Doe has so conducted himself on parole for a period of ..... years as to demonstrate his reformation and to merit pardon with restoration of civil and political rights.'
"In the body of each certificate of remission of fines and forfeitures is set out the reason for granting each case as follows:

"'And whereas it appears to the satisfaction of the State Board of Pardons and Paroles from the official report of the parole officer which is a part of the record in this case, and with no further information to the contrary, that the fine (or forfeiture as the case may be) should be remitted.'

"The Board has asked that I request your official opinion as to whether or not the above loose-leaf book with the certificates of pardon,

remission of fines and forfeitures with the notations mentioned above inserted therein complies with the mandate of the law as set out in Section 16, Title 42 of the Code of Alabama, 1940."

I am of the opinion that your inquiry should be answered in the affirmative, assuming that all documents on which the Board acted are preserved on file.

Title 42, Section 16, Code of Alabama 1940, provides as follows:

§16. When the board may grant pardons, remit fines and forfeitures; procedure.—In all cases except treason and impeachment, and except in cases in which sentence of death is imposed and not commuted, as is provided by law, the board shall have the authority and power, after conviction and not otherwise, to grant pardons and to remit fines and forfeitures. **It shall cause to be entered in a book kept for that purpose the reasons in each case, and must preserve on file all documents on which it acted in the remission of fines and forfeitures and the granting of pardons.** No pardon shall relieve from civil and political disabilities unless specifically expressed in the pardon." (Emphasis supplied.)

Under the emphasized portion of the above quoted Code section (also set out in part in your letter of inquiry), there are three requirements; namely, (1) entry in a book, (2) the reasons in each case in which a fine and forfeiture is remitted or a pardon granted, and (3) preservation on file of all documents on which the Board acted.

As to the first requirement of entry in a book, it is my opinion that the filing of copies of the certificates in a loose-leaf book, as set out in your inquiry, is sufficient.

"A 'book,' in its popular sense, is understood to be a volume, bound or unbound, written or printed."—5 Words and Phrases, Rev. Ed., page 677. The statute in question does not require the book to be a bound volume, and the term "book," as therein used, includes a loose-leaf book.

Regarding the second requirement, copies of the certificates, as set forth in your inquiry, which are filed in each case, in my opinion sufficiently state the reasons for the remission of fines and forfeitures, or the granting of pardons. The official report of a parole officer is incorporated in the certificates by reference, which report would contain in full the reasons for the action of the Board. It would serve no useful purpose to have the official report of the parole officer recopied in the book under consideration.

As above stated, the third requirement of preservation on file of all documents on which the Board acted is assumed to have been met.

Yours very truly,

SI GARRETT

Attorney General.

April 25, 1951

Hon. T. C. Almon

Judge of Probate

Morgan County

Decatur, Alabama

Coroners—Vacancies—Election.

1. Under the provisions of Title 17, Section 68, Code of Alabama 1940, the proper time for coroners to run for election was 1942 and every four years thereafter.

2. If no one offers for election for the office of said coroner at the time when said election is held, then the failure of anyone to run for such office creates a vacancy therein, the vacancy to be filled by appointment of the Governor.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion, bearing date of February 21, 1951, is as follows:

"This inquiry is for your official opinion in clarifying the office of coroner of Morgan County, Alabama.

"Section 417, page 415 of the Code of Alabama of 1923, reads as follows: 'COUNTY OFFICERS; when elected.—One **coroner,** county commissioners or board of revenue of whatever number composed, or courts or boards of like jurisdiction, one tax assessor, one tax collector, one county treasurer in all counties having a county treasurer, two justices of the peace and one constable for each election precinct shall be elected on the first Tuesday after the first Monday in November, 1908, and every fourth year thereafter.'

"Therefore you will notice that under this Section a coroner would be elected in 1908—12—16—20—24—28—32—36—40—44—and 48.

"Bev T. Howell was elected coroner for Morgan County, Alabama, in 1936—40—44 and 48.

"Section 68 of Title 17 of the Code of Alabama of 1940, reads as follows: 'TIME OF GENERAL ELECTIONS—The governor, lieutenant governor, attorney general, auditor, secretary of state, treasurer, superintendent of education, commissioner of agriculture and industries, senators and representatives in the legislature and a sheriff, tax assessor and tax collector in each county and **one coroner** in all counties having a **coroner,** and other officers not otherwise provided for, shall be elected on the first Tuesday after the first Monday in November, 1942, and every fourth year thereafter. A president of the public service commission shall be elected on the first Tuesday after the first Monday in November, 1940, and every fourth year thereafter. Two associate public service com-

missioners shall be elected on the first Tuesday after the first Monday in November, 1942, and every fourth year thereafter.'

"You will notice that Section 68, Title 17 of the Code of Alabama 1940 is a rewrite of Section 416 of the Code of Alabama of 1923. The office of coroner having been added in Section 68, it previously having appeared in Section 417 of the Code of Alabama of 1923, and not in Section 416 of the Code of Alabama of 1923. In other words, the time of election of a coroner was changed in 1940 when it was added to the officers who were to be elected as set out in Section 416 of the Code of Alabama of 1923.

" Under Section 68, Title 17, Code of Alabama of 1940, a coroner for Morgan County should have been elected in November 1942—46 and 50, but no one qualified and ran for the office in those years.

"When Bev T. Howell was elected coroner in 1948 he failed to qualify by taking the prescribed oaths of office and filing his bond within the time prescribed by law. Sometime in January or February 1949, I certified to the then Governor, Honorable James E. Folsom that there was a vacancy in the office of coroner for Morgan County, Alabama.

"On the 23rd day of February, 1949, Governor James E. Folsom appointed Joe Morrison of Decatur, Alabama, coroner for Morgan County, Alabama, "for the unexpired term of Bev T. Howell.'

"Mr. Morrison took the oaths of office and executed the required bond which was filled in the office of the Judge of Probate of Morgan County, Alabama, on the 24th day of February, 1949.

"You will understand from the above explanation that it appears the Candidates for coroner were running for that office under the provisions of Section 415, of Code of Alabama of 1923, rather than under Section 68 of Title 17 of the Code of Alabama of 1940.

"Section 55 of Title 12 of the Code of Alabama of 1940 reads as follows: 'VACANCY; how filled—Vacancies in the office of coroner are filled by appointment of the governor, and the person appointed holds office for the unexpired term, and his successor is elected and qualified.'

"Please give me the benefit of your official opinion on the following questions:

"1. Is there a vacancy in the office of coroner in Morgan County, Alabama?

"2. When did the term of Bev T. Howell as coroner of Morgan County, expire?

"3. Did the appointment of Joe Morrison as coroner for Morgan County, expire in January 1951?

"4. Does the appointment of Joe Morrison, as coroner for Morgan County, Alabama, in February 1949 hold until his successor is **elected and qualified** as provided in Title 12 Section 55?

"5. Can Joe Morrison hold such office until a coroner is elected in 1954"?

I am of the opinion that your first question must be answered in the affirmative.

Under the mandate of the Code of Alabama 1923, Section 417, a coroner was elected in November of 1908, 1912, 1916, 1920, 1924, 1928, 1932, 1936 and 1940. Hon. Bev T. Howell was last legally elected in November, 1940, for a full 4-year term running from January, 1941 to January, 1945. Despite the 2-year change in the dates of the election made by Title 17, Section 63, Code of Alabama 1940, Section 175 of the Constitution of Alabama 1901 prohibited the Legislature from cutting short the normal 4-year term of Coroner Howell. See: **Springer v. State ex rel. Williams,** 229 Ala. 339, 157 So. 219; and **Walker County v. Barnett,** 247 Ala. 418, 24 So. 2d 665. Although Howell qualified and ran in November, 1944, and in November, 1948, and ostensibly was elected, his last two races were a legal nullity for the reason that the date for election of the coroner had been changed by the 1940 Code to November, 1942, 1946, 1950. etc. Therefore, when Howell's term expired in January, 1945, a vacancy occurred in the office of coroner. That vacancy was for a so-called "short term" running from January, 1945, to January, 1947. In the meanwhile, no candidate qualified and ran in November, 1946. Therefore, a vacancy continued to exist. **State ex rel. Benefield v. Cottle** (Ms., November 30, 1950), (Ala.) 49 So. 2d 224.

This vacancy continued until February 23, 1949, when former Governor James E. Folsom appointed Hon. Joe Morrison to fill out the unexpired term The said unexpired term ran from February 23, 1949, to January, 1951. Since no candidate qualified or ran in November, 1950, a vacancy existed in the office for the January, 1951—January, 1955 term. However, to date the vacancy has not been filled by the present Governor, Honorable Gordon Persons. Therefore, Morrison continues to hold office unless and until Governor Persons fills the vacancy by appointing a successor. If Governor Persons should fill the vacancy, his appointee would hold office until January, 1955. In the meanwhile, the next regular election for the office of coroner will take place in November, 1954, for a full term running from January, 1955, to January, 1959.

In other words, Howell's last legal term expired in January, 1945, and Morrison's last legal term expired in January, 1951. Morrison is now holding office during the vacancy. He can be ousted and replaced by the Governor appointing someone else as coroner. However, should the Governor not see fit to fill the vacancy, then Morrison continues to hold office until a successor is elected and qualified.

What I have said hereinabove is a complete answer to all of the questions propounded by you, and I do not deem it necessary to answer such questions categorically.

Yours very truly,

SI GARRETT

Attorney General.

April 27, 1951

Hon. T. C. Almon

Judge of Probate

Morgan County

Decatur, Alabama

Exemptions—Licenses—Veterans.

1. Under Act No. 353, General Acts 1945, page 570, approved July 6, as amended by Act No. 698, General Acts 1947, page 535, approved October 13, 1947, exemptions from business or occupational license taxes granted thereby run only for the period of six consecutive years after the effective date of said act (July 6, 1945), or for a period of six years after discharge from or termination of service in the armed forces of the United States, whichever is the later.

2. The exemption granted by Act No. 353, as amended, supra, is a personal exemption to the veteran, irrespective of his principal occupation, and is not transferable.

3. A veteran is entitled to apply the thirty-five dollar exemption granted under Act No. 353, as amended, supra, towards payment of two or more licenses.

4. A veteran entitled to exemption Act No. 353, as amended, supra, may claim the exemption in any one county of the State without regard to the county of his residence.

5. A commercial fresh water fishing license is a business or occupational license tax within the meaning of Act No. 353, as amended, supra, and a veteran who meets the requirements of said act is entitled to the exemption provided therein.

6. Veterans exempt from payment of business or occupational license taxes by Act No. 353, as amended, supra, include those members of the armed forces serving ninety days or more between September 16, 1940, and "the termination of World War II by the signing of a definitive treaty of peace," and this period will end only with the final and complete settlement of the differences of World War II between the belligerent powers by a conclusive treaty of peace.

Opinion by Assistant Attorney General Parker.

Dear Sir:

Your request for an official opinion bearing date of February 12, 1951, is as follows:

"Will you please give me the benefit of your official opinion as to the interpretation of Article 15, Title 51, Section 864 (1) VETERANS EXEMPT, which was approved July 6, 1945.

"This Section contains the following quotation: 'x x x be exempt from business or occupational license taxes for a period of six years after the effective date of this Act or for a period of six years after his or her discharge from or termination of Service, whichever is later, to the extent and subject to the conditions herein specified.'

"Would a Veteran who was discharged from the Service on September 2, 1945, and was issued an exempt license on October 1, 1945, be exempt for his license for 1952 which becomes due October 1, 1951.

"Would a Veteran who was discharged from the Service on September 2, 1945, who has never taken advantage of this Section, be entitled to a license exemption for a period of six years, if the first license was bought October 1, 1951.

"If a Veteran was discharged from the Service on September 2, 1945, and he secured an exempt license on October 1, 1945, which he renewed for three years and then sold his business, would he be entitled to three more years exemptions beginning on October 1, 1951.

"If a Veterans principal occupation is employment by a Corporation for which he works 40 hours a week, would he be entitled to an exempt license to carry on a sideline business, such as electrical repair, one man garage, Vending Machines or Commercial Fishing.

"Would a Veteran who is otherwise qualified be entitled to license exemptions for two or more unrelated business. In other words, would he be entitled to exemptions for Commercial Fishing, one man garage and electrical repair shop.

"Would a Veteran who is otherwise qualified and has his place of residence in Jefferson County, be entitled to the exemptions for a State and County license in Morgan County.

"Commercial Fishing Licenses are issued in eight Counties, which border on the Tennessee River, being Jackson, Morgan, Colbert, Marshall, Limestone, Lawrence, Lauderdale and Madison. Would a Veteran from Cullman County be entitled to exemptions on a trot line, net, seine or Commercial Fishing License issued from Morgan County, if they were to be used for fishing in Morgan County.

"Would a Veteran who served in the Armed Forces of the United States in 1946-47 and 48 be entitled to the exemptions under Article 15, Title 51, Section 864 (1) etc., Code of Alabama 1940."

In reference to your first inquiry, this office has held that, under the provisions of Act No. 353, General Acts 1945, page 570, approved July 6, 1945, as amended by Act No. 698, General Acts 1947, page 535, approved October 13, 1947 (Title 51, Section 864 (1-8), Cumulative Pocket Part, Code of Alabama 1940), an eligible veteran may claim exemptions from licenses "for a period of six years beginning July 6, 1945, or for a period of six years from the date of his or her discharge from or termination of service, whichever is the later." Quarterly Report of Attorney General, Vol. 60, page 100. Cf. Quarterly Report of Attorney General, Vol. 48, page 249. In other words, the six-year exemption period runs consecutively from July 6, 1945 (the effective date of Act No. 353, supra), or from the date of discharge from or termination of service, whichever is later.

Answering your first inquiry, a veteran who was discharged on September 2, 1945, would only be entitled to an exemption to September 2, 1951, and, therefore, could not claim an exemption for a license which become due October 1, 1951. You will note, however, that if a veteran is exempt on October 1 of the year for which a license tax is due, then he would be exempt for the entire tax year. Quarterly Report of Attorney General, Vol. 60, page 162.

In answer to your second and third inquiries, you are advised that a veteran is entitled to the exemption only for the six consecutive years immediately following the effective date of Act No. 353, as amended, supra (July 6, 1945) or the date of his discharge from or termination of service, whichever is later. If he does not choose to exercise his right of exemption within the six-year period, he loses such right of exemption. Inasmuch as the six-year period of exemption of the veterans referred to in your second and third inquiries will expire on September 2, 1951, both of these inquiries must be answered in the negative.

Your fourth inquiry is answered in the affirmative. The license exemption granted by Act No. 353, as amended, supra, is a personal exemption to the veteran, irrespective of his principal occupation, and is not transferable. See Section 5 of Act No. 353, supra, and Section 6 of Act No. 353, supra, as amended by Act No. 698, supra.

In answer to your fifth inquiry, a veteran is entitled to apply the thirty-five dollar exemption granted under Act No. 353, as amended, supra, towards payment of two or more licenses. Quarterly Report of Attorney General, Vol. 40, page 50.

A veteran entitled to an exemption under Act No. 353, as amended, supra, may claim the exemption in any one county of the State without regard to the county of his residence. Quarterly Report of Attorney General, Vol. 60, page 100. However, he may not claim the exemption in more than one county, notwithstanding the fact that at the time of application, he had not previously made use of his full thirty-five dollar exemption in another county. Quarterly Report of Attorney General, Vol. 51, page 94.

In answer to your seventh inquiry, your attention is called to an opinion in Quarterly Report of Attorney General Vol. 56, page 122, in which it was held that "a commercial fresh water fishing license may be considered a 'business or occupational' license tax," and that veterans who meet the requirements of Act No. 353, as amended, supra, are entitled to the exemption provided therein. As noted in answer to your sixth inquiry, the fact that the veterans here involved lives in another county is immaterial.

Your eighth inquiry was answered in the affirmative by an opinion of this office dated October 3, 1949, and found in Quarterly Report of Attorney General, Vol. 57, page 8, in which it was held: "Veterans exempt from payment of business or occupational license taxes by Title 51, Section 864(1), Code of Alabama 1940 (Act No. 353, as amended, supra), include those members of the armed forces serving ninety days or more between September 16, 1940 and 'the termination of World War II by the signing of a definite treaty of peace,' and this period will end only with the final and complete settlement of the differences of World War II between the belligerent powers by a conclusive treaty of peace."

I might add that, to date, World War II has not been terminated "by the signing of a definite treaty of peace."

Yours very truly,

SI GARRETT
Attorney General.

May 9, 1951

Hon. John H. Garrett, President

Board of Revenue

Cherokee County

Centre, Alabama

Counties — Sheriffs — Cherokee County.

By reason of the limitation set out in Act. No. 162, Local Acts 1943, page 78, the county governing body of Cherokee County may not lawfully allow or pay to the Sheriff of such county an amount in excess of one hundred dollars monthly for expenses incurred by such officer in the purchase of gasoline and motor oil, or other automobile expenses.

Opinion by Asssitant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of December 15, 1951, is as follows:

"Local Act No. 162 found at page 78-80, 1943 Local Acts, Section 3 provides:

" 'The Board of Revenue or like governing body shall provide the Sheriff with gasoline and motor oil and automobile expense for transportation, in the enforcement of the laws of the state and the proper and efficient conduct of his office, in a sum not to exceed One Hundred Dollars ($100.00) per month, to be paid by properly receipted bills and vouchers presented for payment each month.'

"In the first part of this same Section 3 'The Board of Revenue is **required** to furnish each of said officers named in Section 1 of the Act, the Sheriff being one of those named, with necessary offices, books, stationery, office equipment, SUPPLIES, files, furniture, typewriters, adding machines, postage and other conveniences and EQUIPMENT necessary for the proper and efficient conducting and handling of the affairs of said office.'

"As you know, under the General Law the Board of Revenue or like governing body is chargeable with the responsibility of handling the local county finances and affairs, and the first part of this Section 3 just quoted is merely a repetition of the statement of the General Law, and it is our opinion that it was not the intention of this clause attempting to limit expenditures for gasoline for the Sheriff's automobile to attempt to repeal or nullify the General Law. He being a constitutional officer and charged with the enforcement of all the laws.

"The statement of this part of the Act attempting to place a limit of $100.00 for gasoline and oil is somewhat vague in view of purchases for some months being $50.00 or less, while in other months the amount runs as much as $150.00 or more, and for the 12 month period covered by this audit, amounts to only a very little over $1200.00.

"Surely under this Act when the Sheriff has used up the allotted $100.00 worth of gasoline by, say the 20th day of the month, he will not be required to walk, buy the necessary gasoline from his own meager salary, or just sit and watch the criminals ride by, not being able to apprehend them except at his own expense.

"Incidentally, last month he out ran a souped up Ford (Red Rod) who gladly plead guilty to V. P. L. paid $1000.00 fine and a few days later paid $900.00 for the ford back—$1900.00 in all.

"I have discussed this matter with Sen. Cobb, the author of this Act and he tells me that it was certainly not the legislative intent to prevent the Board paying for necessary proper and legitimate expenses for the Sheriff's office.

"At the time this Act was passed, gasoline was selling for 20 cents, today we pay 31 cents. At that time, the Sheriff's office had one car, he now has two and needs another."

By Act No. 660, General Acts 1939, page 1034, passed by both the House and Senate on July 2, 1940, there was proposed an amendment to the Constitution of this State, which, among other things, would authorize and empower the Legislature to enact enabling legislation fixing, regulating, and altering the fees, commissions, and salary, including the method or basis of compensation, to be charged or received by the Sheriff of Cherokee County. Said proposed amendment was submitted to the electorate of the State at the election of November 5, 1940, and was adopted and proclaimed ratified November 15, 1940. (Proclamation Record Volume F, pp. 73-74.)

Subsequent thereto, and under the authority thereof, the Legislature saw fit to enact legislation whereby the compensation of the Sheriff of Cherokee County, along with other officers of said county, was placed on a salary rather than a fee basis, as theretofore provided by the general law. (Act No. 162, Local Acts 1943, page 78.) Under the provisions of this latter act it was provided that the salary of the Sheriff shall be $2500.00 per annum, net; that the county governing body provide such officer with the necessary office, books, stationery office equipment, supplies, files, furniture, typewriters, adding machines, postage, and other conveniences and equipment necessary for proper and efficient conduct of the affairs of his office; and further that:

"* * *The Board of Revenue or other like governing body shall provide the Sheriff with gasoline and motor oil and automobile expense for transportation, in the enforcement of the laws of the State and the proper and efficient conduct of his office, in a sum not to exceed One Hundred Dollars ($100.00) per month, to be paid by properly receipted bills and vouchers presented for payment each month."

You inquire as to whether the county governing body may exceed this limitation as to the purchase of gasoline and motor oil and the payment of other automobile expenses of the sheriff.

In my judgment such is not permissable.

Although it is clear to me that in establishing the present method or system of compensation for the Sheriff of Cherokee County it was the intent of the Legislature that all administrative and operational expenses of the office be borne by the county, with the salary authorized the Sheriff representing a net income to him, such legislative body further saw fit to re-

strict the amount which might be allowed such officer for the specific items of gasoline, motor oil and automobile expenses, said allowance being predicated on a monthly rather than an annual basis. Their wisdom in this regard it is not mine to question. If it be that the amount specified is inadequate to serve the best interest of the county, I feel it to be a matter for legislative rather than judicial correction.

It is true that by Act No. 593, General and Local Acts 1949, page 925, the Legislature provided that the county governing bodies of the counties of the state might, in their discretion, and upon application of the sheriff, purchase items of equipment and supplies, and pay for services performed for the sheriff reasonably necessary in the performance of his duties. However, in my opinion, such act in no way repeals or amends the provisions of Act No. 162, supra, applicable to Cherokee County alone, but serves rather as a supplement to the general law of the state governing this particular subject, and applicable only to those counties operating under the general law rather than special or local legislation, as in Cherokee County. Such act contains no repealing provision, and, in my opinion, it was never contemplated that the provisions of such act become effective in those counties then operating under special or local legislation relative to the compensation of the Sheriff. **State ex rel. Harrington v. Randle,** 250 Ala. 472, 35 So. (2d) 84.

In view of certain statements found in your request for opinion, I feel it well to point out that the duties of the sheriff and the manner, means, and amount of his compensation are entirely separate and distinct matters and bear little or no relation to one another. The duties of such officer are to be found stated in Title 54, Section 5, Code of Alabama 1940. The fact that the compensation allowed him for the performance of such duties is deemed by himself, or others, to be inadequate in no wise relieves such officer of any of the duties there imposed. Such conclusion is based on the legal premise that when a person seeks an office he takes it with all its responsibilities and emoluments, its burdens and benefits. If the law requires certain things to be done and no compensation be provided, the duty must nevertheless be discharged . **Torbert v. Hale County,** 131 Ala. 143, 30 So. 453; **Pollard v. Brewer,** 59 Ala. 130.

I am constrained to hold, therefore, that the county governing body may not lawfully allow or pay to the Sheriff a sum in excess of $100.00 per month for expenses incurred by such officer in the purchase of gasoline and motor oil, or other automobile expenses incurred by him, due to the limitation found in Act. No. 162, supra.

Yours very truly,

SI GARRETT

Attorney General.

May 11, 1951

Hon. C. L. Harrell, Superintendent

Autauga County Board of Education

Prattville, Alabama

Counties — Schools — Motor Vehicles — Roads and Bridge.

Under Title 23, Section 43, Code of Alabama 1940, a county may purchase and use a valve facing and repairing machine on a prorata basis with the county board of education, which machine is to be placed in a school bus garage, and used in the maintenance of both county and school motor vehicles.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of April 23, 1951, is as follows:

"As County Superintendent of Education, I would like to have your official opinion on the following proposal:

"The Autauga County Board of Education owns and operates a school bus garage at Autaugaville, Alabama. Equipment has been added from time to time. It has been proposed that the Autauga County Board of Revenue pay equal shares of the total cost of a valve-facing and repairing machine to be placed in the school bus garage and used jointly by the mechanics employed by the Autauga County Board of Education and those employed by the Autauga County Board of Revenue. The approximate cost of this machine would be Four Hundred Dollars ($400.00). The money, if paid by the Autauga County Board of Revenue, would be from the Gasoline Tax Fund.

"Is it legal for the Autauga County Board of Revenue to purchase and use this machine on an equal share basis with the Autauga County Board of Education?"

I am of the opinion that your inquiry should be answered in the affirmative, provided the county governing body deems the prorata purchase and use of equipment in question to be for the best interest of the county.

Under the provisions of Title 23, Section 43, Code of Alabama 1940, a county governing body is given broad discretionary powers in relation to the construction, maintenance, and repair of roads and bridges of the county. It may purchase and maintain road machinery and motor vehicles to this end. **Ensley Motor Co. v. O'Rear,** 196 Ala. 481, 71 So. 704.

If the governing body of Autauga County determines it to be for the best interest of the county to purchase and use, in conjunction with the county board of education, the machinery in question for maintaining its motor vehicles, I know of no legal objection to the procedure.

Yours very truly,

SI GARRETT
Attorney General.

May 21, 1951

Hon. Frank O. Deese

Judge of Probate

Dale County

Ozark, Alabama

Dale County — Fine and Forfeiture Fund.

If there are no charges or claims registered against the fine and forfeiture fund of Dale County at the end of the fiscal year, the presiding officer of the county governing body of said county may, under the provisions of Title 12, Section 34, Code of Alabama 1940, by resolution of the governing body of said county, expressed in writing and spread upon the minutes of the court, transfer any surplus in the fine and forfeiture fund to the general fund of Dale County, or to any special fund.

Opinion by Assistant Attorney General Galloway.

Dear Sir:

Your request for an official opinion, bearing date of April 23. 1951, is as follows:

"I desire your official opinion of the following:

"Dale County has at the present time an unencumbered surplus of $24,366.14 in its fine and forfeiture fund. Under local act No. 160, approved July 21, 1927, may any part of this fund be transferred to the county's general fund?

"Under Section 3 of the local act it is mandatory that funds be set apart from the general fund to the fine and forfeiture fund when a deficiency exists in such fund. I am wondering if any part of this fine and forfeiture surplus may be turned into the general fund now that that there are no claims, either registered or unregistered against the fine and forfeiture fund."

The answer to your spacific question must be in the negative. There is no provision in Act No. 160, Local Acts 1927, page 70, for the transferring of surplus funds from the Fine and Forfeiture Fund of Dale County to the General Fund of Dale County.

While the fine and forfeiture fund is a county fund, the manner of its disposition resides with the legislature, and the county governing body has no control over it, save only that specifically granted by legislative acts. **Brown and Street v. Parris,** 93 Ala. 314, 9 So. 603; **Ryan, Treasurer v. Collins,** 196 Ala. 478, 71 So. 690.

In this connection your attention is called to Title 12, Section 34, Code of Alabama, which provides as follows:

"The county treasurer of any county in this state may transfer any balance on hand at the end of the fiscal year of the fine and forfeiture fund in excess of the registered claims and lawful claims or charges against said fund to the general fund or to any special fund to which by resolution of the board of revenue, or court of county commissioners, expressed in writing and spread upon the minutes of the court, he may be directed."

This section expressly provides that the excess of the fine and forfeiture fund may be transferred to the general fund of the county by the governing body of the county **at the end of the fiscal year.**

Title 12, Section 33, Code of Alabama 1940, places upon the county treasurer the duty to register all claims against the fine and forfeiture fund in the order in which they are presented, and to keep in well bound books the registration of such claims. In the absence of this list of registered claims and charges, the court of county commissioners may not authorize the transfer of the balance in the fine and forfeiture fund to another authorized fund. Quarterly Report of Attorney General, Vol. 33, page 111.

In Dale County, there is no treasurer, this office having been abolished by Act. No. 154, Local Acts 1915, page 55. In lieu of a county treasurer, Dale County has a county depository. Act No. 154, supra. In a county having a depository in lieu of a treasurer, all acts required by law to be performed with respect to county funds, other than the receipt and disbursement of county funds, are required to be performed by the presiding officer of the board of revenue, or presiding officer of the court of county commissioners. Title 12, Section 53, Code of Alabama 1940. It would be incumbent upon the presiding officer of the governing body of Dale County to register all claims against the fine and forfeiture fund of said county. Such duty devolves upon him under the provisions of Section 53, supra, because there is no county treasurer. If, therefore, the presiding officer of the county governing body determines that there are no charges or claims registered against the fine and forfeiture fund of the county at the end of the fiscal year, it is his duty to report such fact to the county governing body, at which time he may, under the provisions of Section 34, supra, by resolution of the county governing body of Dale County expressed in writing and spread upon the minutes of the court, transfer any surplus in the fine and forfeiture fund to the general fund of Dale County, or to any special fund.

Very truly yours,

SI GARRETT

Attorney General

May 24, 1951

Hon. Earl M. McGowin

Director of Conservation

CAPITOL

Officers and Offices — Department of Conservation — Corporations — Contracts.

Purchases of materials and lands, by or on behalf of the Department of Conservation from corporations of which the Director of Conservation is a stockholder, are not within the inhibition of Title 41, Section 221, Code of Alabama 1940.

Opinion by Asssitant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of April 9, 1951, is as follows:

"I am a stockholder in several corporations doing business in Alabama. In the course of my duties as Director of Conservation I have noticed transactions between this Department and some of these companies such as material purchases from a local store by departmental employees in the field or through purchase orders issued by the Department of Finance. At the moment this Department is negotiating agreements aimed at establishing public hunting in areas in which two of these companies own land.

"Section 221, Title 41 of the 1940 Code, makes it a misdemeanor for:

"'Any public officer who shall be beneficially interested, directly or indirectly, in any contract, sale, lease or purchase which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his office, or accept, directly or indirectly, any compensation, gratuity or reward from any other person beneficially interested therein;'

"I should like to have your official opinion whether or not this statute could be applied in my instance under the circumstances hereinabove cited."

I am of the opinion that your inquiry should be answered in the negative.

A corporation is a distinct entity to be considered separate and apart from the individuals who compose it, and a contract with the corporation is not a contract with the individuals. **Navoo Hardwood Company v. Bass,** 214 Ala. 553, 108 So. 452.

Therefore, it is my opinion that such contract, as referred to in your letter of inquiry, do not show such a pecuniary interest on your part as to come within the inhibitions of Title 41, Section 221, Code of Alabama 1940.

First, this section, being penal in its nature, must be strictly construed; and, second, the contracts are contracts with the corporations and not with you individually.

This office, in construing Section 221, supra, and statutes of like import, has held on numerous occasions in accordance with the foregoing. Quarterly Report of Attorney General, Vol. 56, page 108; Quarterly Report of Attorney General, Vol. 51, page 5; Quarterly Report of Attorney General, Vol. 49, page 158; Quarterly Report of Attorney General, Vol. 19, page 236; Quarterly Report of Attorney General, Vol. 17, page 6; Quarterly Report of Attorney General, Vol. 16, page 65; and authorities cited in these opinions.

Yours very truly,

SI GARRETT

Attorney General.

May 24, 1951

Hon. Thomas W. Robinson

County Solicitor

Clarke County

Grove Hill, Alabama

Motor Vehicles — Licenses.

Where owner of trucks engaged in private commercial hauling is not a resident of Mississippi and maintains a situs for his trucks in Alabama, operating these trucks between points in Alabama and Mississippi during the course of such haulage, payment of license fees for the operation of the trucks to the State of Mississippi does not exempt such person from payment of license fees to the State of Alabama, under the reciprocal agreement between the States of Mississippi and Alabama.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion bearing date of April 13, 1951, is as follows:

"I would like to request your opinion in a case made by Edward Owens of the Alabama Highway Patrol, against Jesse Knight, an employee of J. E. Mitchell, who is engaged in hauling pine stumps from Clarke County to Columbia, Mississippi. Mr. Mitchell owns five three-ton trucks, all of which bear Mississippi license plates and are engaged in this operation. (Only one case was made as a test case.)

"Mr. Mitchell, owner of the trucks, resides and owns a home in Angie, Louisiana. In supervising his business, he spends about as much time in Grove Hill, Alabama as at the aforementioned residence. The driver of the truck in this particular case, Jesse Knight, resides in Grove Hill, Alabama. The trucks are in Grove Hill, about as much as they are in Columbia, Mississippi. Mr. Mitchell purchased Mississippi license plates for all of his trucks in Columbia, Mississippi, in February of this year. He was informed, so I am told, by the Mississippi Vehicle Commission that the tags would be legal for Mississippi and Alabama, according to reciprocal trucking agreement. These trucks are not qualified with the Interstate Commerce Commission as required to haul for hire because they are engaged in a private commercial operation. Mr. Mitchell brought his truck into Alabama around the first of February and he says he expects to operate here for approximately two years.

"The disposition of the case referred to awaits your opinion.

"After reading reciprocal agreement between the State of Alabama and State of Mississippi and the Code Sections covering same, it would seem to me that Mr. Mitchell should license his trucks in Alabama due to the fact that he is engaged in commercial hauling. Am I correct in this contention?"

From the facts set forth in your request, it appears that the owner of the trucks in question, is not a legal resident of Mississippi. It also appears from the facts in your request that the situs of said trucks is in Alabama. Your question is whether or not the payment of license fees to the State of Mississippi for the operation of the trucks in that state exempts the owner of the trucks from payment of similar license fees to the State of Alabama, under the terms of a reciprocal agreement between the State of Alabama and the State of Mississippi. My conclusion is that the owner of the trucks is not so exempt and must pay license fees to the State of Alabama.

The provisions of Section 14 of Act No. 664, General Acts 1939, page 1050, allow the Department of Revenue to enter into reciprocal agreements or contracts with other states constituting a fair exchange of rights or privileges in regard to the use of the highways of Alabama by motor vehicles operated for hire. Pursuant to the powers set forth in this section, the State Department of Revenue entered into agreements with the State of Mississippi, the latest of such agreements having become effective on October 15, 1946. The crucial section of this agreement, for the purpose of your request, is Paragraph 2:

"This agreement shall apply to persons, firms, corporations and associations, (who are now legal residents, or who hereafter may become legal residents of either of the said reciprocating states,) and who are authorized to engage or are engaged in the operation of motor vehicles duly licensed in the state which is a party to this agreement and of which the owner is a legal resident."

It is clear that, under the terms of Paragraph 2, the truck owner in question is not entitled to an exemption from the Alabama license fees. He has not become duly licensed in the state of which he is a legal resident. He is duly licensed in Mississippi, but is not a legal resident of Mississippi.

An opinion of this office in Biennial Report of the Attorney General, 1936-1938, page 658, is to be compared with this opinion. There, the reciprocal agreement between Alabama and Georgia did not make reciprocity depend on resident. The agreement merely extended Alabama privileges to Georgia licensees and vice versa.

In summary, for the reasons set forth above, the truck owner in question must pay license fees to the State of Alabama for the privilege of operating his trucks in Alabama.

Yours very truly,

SI GARRETT,

Attorney General.

May 24, 1951

Hon. D. G. Gill, M. D.

State Health Officer

Department of Public Health

Montgomery 4, Alabama

Health and Health Department — Municipalities — Trailers — Property.

1. A house trailer parked in a fixed and relatively permanent location and used as permanent living quarters for one or more persons is a "dwelling" within the meaning of a municipal ordinance requiring adequate sanitary facilities for dwelling houses as a health and sanitary measure.

2. Legal responsibility for providing a house trailer with adequate sanitary facilities, pursuant to the requirements of a municipal ordinance, must be shared jointly by the occupant of the trailer and by the owner of the premises on which such trailer is parked.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion bearing date of April 27, 1951, is as follows:

"Section 1 of the city of Dothan's Ordinance No. 76, copy of which is attached, states in part that it shall be unlawful for any person to maintain any place where human beings reside unless such place is provided with adequate sanitary facilities. It seems that in the city of Dothan a number of trailers are parked on residence lots, and their use as living quarters gives rise to two questions:

"1. Is a trailer used as living quarters to be considered as coming within the meaning of said Section 1, or any other pertinent section of the ordinance referred to?

"2. If the answer to the first query is in the affirmative, and a trailer is parked on a lot already occupied by a residence, whose responsibility is it to provide the sanitation for the trailer, the owner of the property or the owner of the trailer?"

1. In my opinion, your first question must be answered in the affirmative.

Section 1, of Ordinance No. 76, adopted by the City of Dothan on the 15th day of May, 1936, to take effect on the 21st day of May, 1936, provides as follows:

"It shall be unlawful for any person, firm or corporation or their agent to construct or maintain within the City of Dothan, Alabama, or its police jurisdiction, any dwelling, building, premises, or other place where human beings reside, are employed or congregate, or to rent, lease, use, or permit to be used for such dwelling, building, premises, or other place which is not provided with adequate facilities for the disposal in a sanitary manner of the bodily discharges of such persons, the method, type, construction, capacity, and location of which shall be in accordance with the provisions of this Ordinance."

The ordinance applies to any dwelling, building, premises, or other place where human beings reside, are employed, or congregate. If a house trailer be parked in a fixed and relatively permanent location in such manner as to lose its transient status, and is used as permanent living quarters for one or more persons, then, in my judgment it becomes a "dwelling" within the contemplation of Ordinance No. 76, supra.

In **Lower Merion Township v. Gallup,** 46 Atl., 2nd 35, 158 Pa. Super. 572, it was held that house trailers, mounted on boxes or jacks, rather than wheels, and connected with water and electric lines, and remaining within the township for more than the 30-day period permitted by ordinance, were "dwelling houses" within the township building code ordinance setting up minimum standards for dwelling houses as a health and sanitary measure.

2. In my opinion, your second question must be answered by pointing out that Ordinance No. 76, supra, fixes upon both the occupant of the trailer and upon the person, firm or corporation maintaining the premises on which such trailer is parked a joint legal responsibility for providing adequate sanitary facilities. Such a house trailer is maintained by its occupant or occupants, and the premises on which the trailer is parked are maintained by the owner of the premises. Therefore, by the terms of the said ordinance, the legal responsibility for providing such trailer with adequate sanitary facilities rests upon each party to the arrangement or agreement for parking facilities. Each violates the ordinance if adequate sanitary facilities are not provided, and no private agreement of the parties could relieve the one or the other of his legal liability.

I do not wish to be understood, however, as implying that each and every house trailer used as permanent living quarters necessarily must be equipped with separate and distinct sanitary facilities. Whether adequate sanitary facilities exist is a question of fact to be determined by the municipal authorities in each individual case. The use and freedom of access to such facilities in a sufficiently nearby dwelling house or to adequate sanitary facilities elsewhere located, by virtue of permissive or contract arrangements with the owner of the premises might answer the legal requirements for adequate sanitary facilities. In fact, so called "trailer camps" or "motor

courts" which lease parking space for house trailers generally furnish, and are understood as agreeing to furnish, adequate sanitary facilities.

Yours very truly,

SI GARRETT

Attorney General.

May 24, 1951

Hon. M. W. Forman

Judge of Probate

St. Clair County

Ashville, Alabama

Counties — Hospitals

County governing body may appropriate, out of the general fund of the county, funds to care for sick or wounded persons who are unable to provide for themselves.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion bearing date of May 2, 1951, is as follows:

"About one year ago there was a man that moved into St. Clair County, working at a sawmill. This man got drunk and set his bed afire and had some severe burns. He was carried to the hospital in Pell City, Alabama, and the hospital bill and doctor's bill, when he was able to come out, amounted to $1,104.00.

"This man was not on the Department of Public Welfare roll at the time he went in the hospital, but after he came out and being disabled, they did put him on. The hospital sent St. Clair County a bill for $1,-104.00, claiming that he was an indigent patient, and thought that St. Clair County should pay the bill.

"I would like to have an opinion from you as to whether St. Clair County can legally pay this hospital bill."

After having made certain prior determinations of fact, St. Clair County may legally pay the hospital bill in question.

The facts of your situation must come within the tests of Title 22, Section 190, Code of Alabama 1940, which reads as follows:

"The governing body of any county or city in this state may make an appropriation or appropriations out of their respective treasuries to aid in maintaining and taking care of sick and wounded persons who are unable to provide for themselves in any hospital maintained for the care of the sick and wounded. Any county or city owned or controlled hospital may accept patients from any county or city."

The first question for determination is whether or not the man in question is "unable to provide for (himself)." The facts of your opinion do not indicate this, except in that the man was later found eligible for public assistance from the State Department of Public Welfare. Your opinion also states that the hospital claimed he was an indigent patient.

If, in fact, the man was indigent and unable to provide for himself, then Section 190, supra, would constitute sufficient authority for the payment of the hospital bill. This section was designed to give counties authority to pay monies out of their general fund for the emergency care of sick and wounded in the county. The care is not restricted to care in hospitals actually owned or controlled by counties or cities. See: Quarterly Report of Attorney General Vol. 18, page 100. The provisions are applicable for payment to any hospital maintained in the county, whether maintained by a governmental agency or not.

Very truly yours,

SI GARRETT,

Attorney General.

May 25, 1951

Hon. R. P. McRee, Administrator

Alabama Alcoholic Beverage Control Board

Montgomery 2, Alabama

Alabama Alcoholic Beverage Control Board — Merit System — Attorneys.

The Alabama Alcoholic Beverage Control Board is authorized, under the provisions of Title 29, Section 5, Code of Alabama 1940, to engage the services of a person engaged in the practice of law without regard to the State Merit System Law.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion bearing date of February 12, 1951, is as follows:

"The Board in a special meeting held January 31, instructed that Mr. Jesse M. Williams, Jr., be employed as Attorney for the ABC Board at a salary of $400.00 per month, effective February 1, 1951.

"An effort was made to have Mr. Williams placed on the ABC Board's payroll, but a question was raised by Mr. Charles W. Terry, Director of the State Personnel Department, inasmuch as Mr. Williams had not qualified under the Merit System Act.

"The 13th page, Section F, Title 29, Code of Alabama 1940, reads in part as follows: '* * * and engage the services of experts and of persons engaged in the practice of a profession.'

"It will be admitted by all parties concerned that Mr. Williams is at the present time actively engaged in the practice of law, and it will be appreciated if you will advise us as soon as possible that we are authorized to employ Mr. Williams under this Section of the Code, without the necessity of his having to qualify under the Merit System Act."

Under the provisions of Title 55, Section 301, Code of Alabama 1940, as amended by Act. No. 349, General Acts 1943, page 332, positions in the service of the State are divided into the exempt, the unclassified, and the classified service. Positions in the exempt service and the unclassified service are enumerated in said section, and positions in the classified service include "all other officers and positions in the State service."

An attorney engaged by the Alabama Alcoholic Beverage Control Board does not come within the term "exempt service" or the term "unclassified service" as the same are enumerated in Title 55, Section 301, as amended, supra. Therefore, the question arises as to whether or not such attorney comes within the term :"classified service" as used in said section.

Section 6(h) of the original Alabama Alcoholic Beverage Control Law (General Acts, Extra Session, 1936-37, page 40) (the section dealing with the functions, duties, and powers of the Board) is as follows:

"(h) To appoint every officer, agent, and employee, in accordance with the qualifications specifically set out in this Act, required for the operation of the business of said Board, dismiss them, fix their salaries or remunerations, assign them their official positions and titles, define their respective duties and powers, require them or any of them to give bonds payable to the State in such penalty as shall be fixed by the Board, and engage the services of experts and of persons engaged in the practice of a profession."

Section 6(h), supra, as brought forward into the Code of Alabama 1940, under Title 29, Section 5, reads as follows:

"To appoint, subject to the provisions of the merit system, every officer, agent, and employee, in accordance with the qualifications specifically set out in this chapter, required for the operation of the business of said board, assign them their official positions and titles, define their respective duties and powers, require them or any of them to give bonds payable to the state in such penalty as shall be fixed by the board, and engage the services of experts and of person engaged in the practice of a profession."

The only material change made in the codification of Section 6(h), supra, was the addition of the provision "subject to the provisions of the merit system."

It will be noted from the above quoted provision of Title 29, Section 5, that the board has authority, "subject to the provisions of the merit system," to appoint every officer, agent, and employee required for the operation of the business of the board, and also has authority to "engage the services of experts and persons engaged in the practice of a profession."

It is without question that the appointments of officers, agents, and employees by the board are "subject to the provisions of the merit system." However, in view of the wording of the statute, which treats the power of the board to "engage the services of experts and persons engaged in the practice of a profession" separate and apart from the power of the board to appoint officers, agents, and employees, it is my conclusion that "experts and persons engaged in the practice of a profession," whose services are engaged by the board, do not come within the classified service of the State as that term is used in Section 301, as amended, supra.

In codifying Section 6(h), supra, if it had been the intention that experts and persons engaged in the practice of a profession be engaged "subject to the provisions of the merit system," such intention might easily have been evidenced by inserting such provisions in such a manner as to apply to the word "engage" as well as to the word "appoint," but this was not done. The manner in which Section 6(h) was codified indicates that it was the intention that "experts and persons engaged in the practice of a profession" might be so engaged without regard to the State Merit System Law.

This conclusion is strengthened by the fact that Title 55, Section 301, as amended, supra, is a general provision of law dealing with the general subject of positions in the service of the State, while that part of the quoted portion of Title 29, Section 5, supra, pertaining to engaging the services of experts and of persons engaged in the practice of a profession, is a special provision of law dealing with that specific subject. It is a well known principle of statutory construction that where there is a general provision of law dealing with a general subject and a special provision of law dealing with a specific subject, the special provision will be construed as an exception to the general law and, therefore, controlling; or, stated differently, that if there is an apparent conflict between a general provision of law dealing with a general subject and a special provision of law dealing with a specific subject, the general provision will yield to the special, and both will be given effect so as not to conflict. **Herring v. Griffin**, 211 Ala. 225, 100 So. 202; **Downing v. City of Russellville**, 241 Ala. 494, 3 So. 2d 34; **State v. Elliott**, 240 Ala., 439 21 So. 2d 310; **Miller v. State Ex rel. Peek**, 249 Ala. 14, 29 So. 2d 411; Quarterly Report of Attorney General, Vol. 50, page 215.

In view of the above, I am convinced that the Alabama Alcoholic Beverage Control Board may engage the services of a person engaged in the practice of law without regard to the State Merit System Law.

Very truly yours,

SI GARRETT,

Attorney General.

June 8, 1951

Hon. William F. Thetford,

Circuit Solicitor,

Fifteenth Judicial Circuit,

Montgomery, Alabama.

Department of Conservation — Game and Fish — Licenses — Veterans — Exemptions.

A person serving as a member of the armed forces of the United States during the Korean conflict is serving during a period of time when the United States "is engaged in a war," within the meaning of such term as used in Section 1 of Act No. 502, General Acts 1945, page 727, and, therefore, not required to procure a hunting license or a fishing license to hunt or fish within this State.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of April 30, 1951, is as follows:

"Your attention is directed to Title 8, Section 41(1), of the 1940 Code of Alabama. This Act provides that members of the armed services are not required to procure hunting or fishing licenses during any period of time in which the United States of America is engaged in a war.

"I would like to be advised as to whether the United States of America is engaged in a war within the purview of this statute."

Section 1 of Act No. 502, General Acts 1945, page 727 (Title 8, Section 41(1), Cumulative Pocket Part, Code of Alabama 1940), is as follows:

"Section 1. No person serving as a member of the Armed Forces of the United States of America shall be required to procure a hunting license or a fishing license to hunt or fish within the State of Alabama during any period of time in which the United States of America is engaged in a war."

In an opinion of this office rendered to Hon. John E. Mandeville, Clerk, Circuit Court, Mobile County, under date of December 29, 1950(Ms.), it was held that the participation of the United States in the Korean conflict constitutes "an existing state of war" within the meaning of such term as used in Act No. 2, General Acts, Extraordinary Session, 1942, page 9, permitting county officials of the State of Alabama to be in the military service of the United States at a time when there is "an existing state of war" between the United States and any other country without vacating their offices.

This office has also held in an opinion to Hon. J. E. Fleming, Chairman, Board of Registrars of Jefferson County, under date of January 8, 1951(Ms.), that "a person who has honorably served in the military service of the United States or who is honorably serving or shall honorably serve in the

military service of the United States" during the Korean conflict "is entitled to the exemption from poll tax" granted by Constitution of Alabama 1901, Section 194½, as amended.

In arriving at the conclusions reached in the above opinions, it was necessary to interpret the term "an existing state of war" as used in Act. No. 2, supra, and the term "at war with any foreign state" as used in Section 194½, as amended, supra. In Act No. 502, supra, the term "engaged in a war" is used to define the period of time during which a member of the armed forces of the United States is not required to procure a hunting license or fishing license to hunt or fish within the State. It is my conclusion that the term "engaged in a war" is of such similar import to the term "an existing state of war" as used in Act. No. 2, supra, and the term "at war with any foreign state" as used in Section 194½, as amended, supra, that the reasoning used and the conclusions reached in the above opinions are equally applicable to the question presented by your inquiry.

In view of the above conclusions, it is my opinion that the participation of the United States in the Korean conflict constitutes a period of time when the United States "is engaged in a war" within the meaning of such term as used in Act. No. 502, supra.

It therefore follows that a person serving as a member of the armed forces of the United States during the Korean conflict is not required to procure a hunting license or a fishing license to hunt or fish within the State.

The conclusions reached herein are not in conflict with an opinion rendered under date of August 5, 1948, appearing in Quarterly Report of Attorney General, Vol. 52, page 122, in which it was held that a person serving as a member of the armed forces of the United States was not exempt from purchasing hunting and fishing licenses to hunt or fish within the State since the United States was not engaged in war. At the time that opinion was written, the United Staes was not engaged in open hostilities with any foreign country as is the situation that exists today.

Yours very truly,

SI GARRETT,

Attorney General.

June 19, 1951

Hon. Lawrence Dumas, Jr.,

Member, House of Representatives,

CAPITOL.

Employees' Retirement System — Jefferson County — Pensions.

House Bill 477 of the Regular Session of the Legislature of Alabama, 1951, if passed, would legally dissolve the existing retirement system created by Act No. 328, General Acts 1945, page 531.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion bearing date of June 18, 1951, is as follows:

"In order to enable the employees of Jefferson County to take advantage of the benefits of Federal Old-Age and Survivors Insurance, it will be necessary to completely wind up the affairs of the present county retirement system created by Act. No. 328, General Acts 1945, page 531, which act provided for retirement systems in counties having a population of 400,000 or more. According to the 1940 census, this act applies only to Jefferson County.

"Accordingly, H. B. 477 has been introduced in the present session of the Legislature. Said bill provides for the dissolution of the present system and the payment of all benefits and rights thereunder.

"Would you please examine said bill, a copy of which is attached, and render your official opinion as to the validity of such dissolution under the laws of Alabama if said bill is passed?"

The present retirement system covering the employees of Jefferson County was established by Act No. 328, General Acts 1945, page 531. Section 19 of this Act provides as follows:

"Section 19. No provision hereof shall be construed to bestow upon any member or any other person any vested right to benefits, return of contributions or any other valuable interests hereunder. No implied contract for benefits shall be held to arise hereunder, either before or after retirement. Any provisions hereof may be changed by subsequent legislation without regard to accrued rights."

Even if this provision were not embodied in Act. No. 328, supra, the Legislature would have authority to abolish the system. There is a line of decisions to the effect that as pensions or retirement benefits granted to employees of the State or its municipalities are purely of statutory origin, the employees, in making contracts of employment under which the right to participate in the pension or retirement fund accrues, do so in contemplation of the reserved right of the Legislature to amend or repeal the laws on which the systems are founded. This is true even though the pension fund is made up partly with deductions from salaries or wages agreed to be

paid the employees. See **Dallas v. Trammell**, 129 Tex. 150, 101 S. W. 2d 1009, and cases cited therein.

Turning to H. B. 477, we find that the present members of the pension board are made receivers of all property, assets, and estate of the retirement system established by Act No. 328, supra. These receivers are answerable to the presiding judge of the circuit court of the county for their actions. Section 3 of H. B. 477 provides for payment of all benefits to which employees who have retired are or will be entitled. Those who have not retired are to be refunded their contributions. Thus, it appears that those employees who have done everything necessary to qualify for the benefits under the existing retirement system, and have actually retired, have been provided for in Section 3 of the proposed Act; and such employees are assured of continuing benefits. Those employees who have not retired, although having no vested right in the pension or retirement fund as specifically provided in Section 19 of Act No. 328, supra, have also been adequately provided for by having the return of their contributions guaranteed.

The plan proposed by H. B. 477, wherein the receivers are directed in their actions by the presiding judge of the circuit court of the county, appears to be workable and equitable in every way. It is my opinion that the proposed plan of dissolution offends none of the laws of Alabama, and that H. B. 477, if passed, would legally dissolve the existing retirement system in Jefferson County.

Yours very truly,

SI GARRETT,

Attorney General.

June 21, 1951

Hon. Frank M. Stewart, Commissioner,

Department of Agriculture and Industries,

CAPITOL.

Agriculture and Industries — Milk Control Board — Officers and Offices.

The Commissioner of Agriculture and Industries is a member of the State Milk Control Board, having the same authority, powers, and duties as other members of said board.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion bearing date of May 24, 1951, is as follows:

"You attention is directed to the provisions of Title 22, Section 207 of the Code of Alabama of 1940, which creates the Alabama State Milk Control Board and provides for the appointment of the members thereof. You will notice that this statute provides, among other things, that the Commissioner of Agriculture and Industries shall be an Ex-Officio member of the Board.

"I shall appreciate it if you will give me your official opinion as to whether I, as Commissioner of Agriculture and Industries, am a member of the State Milk Control Board having the same authority, powers and duties as the members of this Board who are appointed by the Governor pursuant to the above mentioned statute. If you hold that my duties on this Board are not the same as the other members, please advise me of the nature of the duties which I am required to perform as a member of the State Milk Control Board."

Act No. 163, General Acts 1935, page 204, which created the original State Milk Control Board, was enacted as an emergency measure. Section 3 of the Act provided in part:

"There is hereby created a State Milk Control Board to consist of five members. The members of said Board shall be appointed by the Governor of Alabama with the following qualifications: . . . . "

The Act then lists the qualifications for the five members, no reference being made to the Commissioner of Agriculture and Industries. The provisions of this Act expired June 30, 1939.

Act No. 164, General Acts 1939, page 267, as amended by Act. No. 553, General Acts 1939, page 873, was brought into the Code of Alabama 1940 as Chapter 7 of Title 22, and outlines the composition, powers, and duties of the present Milk Control Board. In passing the above Acts, the Legislature changed the wording and substance of the earlier Act in many ways, one of which was to add, as an ex-officio member of the board, the Commissioner of Agriculture and Industries.

Section 207 of Title 22, supra, provides in part as follows:

"There shall be a milk control board to be known as the 'Alabama state milk control board,' to consist of five members."

This section then enumerates the qualifications for five members of the board, and further provides:

"The commissioner of agriculture and industries shall be an ex-officio member of the board; he may designate any member of the department of agriculture and industries to represent him at its meetings."

It would be a narrow construction of the above quoted section to deny the commissioner a voice in the proceedings of the board. There is nothing in the statute specifically requiring or justifying such a narrow construction. The duties and powers of the commissioner are not limited in any way. It has been held that milk control legislation should receive liberal construction. **Milk Control Board v. Phend,** 104 Ind. App. 196, 9 N. E. 2d 121.

In **State, ex rel. Saint v. Dowling,** 167 La. 907, 120 So. 593, the question arose as to whether the president of the board of health was a "member"

of said board. The constitution of Louisiana provided that "the state board of health shall be composed of a president, who shall be designated as state health officer, and eight members, one from each congressional district as at present constituted." The Supreme Court of Louisiana, in holding that the president was a member of the board, said:

> "It would be more accurate perhaps to say that the board is composed of a president and eight **other** members; but the idea that was intended to be conveyed was that the board should be composed of the president and one member from each of the eight congressional districts. It is not unusual, in addressing the president and other members of a political board, to refer to them as the president and members, instead of the president and **other** members. Be that as it may, when the Constitution declares that the state board of health shall be **composed** of a president and eight members, it makes the president one of the component members of the board; . . . . . "

So it is here. It might have been more accurate to have said the State Milk Control Board shall consist of the Commissioner of Agriculture and Industries and five other members, but it is my opinion that, taken as a whole, Section 207, supra, shows that such was the intent.

It is, therefore, my opinion that the Commissioner of Agriculture and Industries, as an ex-officio member of the State Milk Control Board, has the same authority, powers, and duties as the other members of the board.

Yours very truly,

SI GARRETT,

Attorney General.

June 21, 1951

Dr. D. G. Gill

State Health Officer

State Health Department

CAPITOL

Hospitals — Licenses — Colleges and Universities — Schools — Prisons.

1. All hospitals, except those operated by the Federal Government and mental hospitals under the supervision of the Board of Trustees of the Alabama State Hospitals, which offer their facilities to the general public for the diagnosis and treatment of injury, deformity, disease, or obstetrical care, must apply for and obtain a license under the provisions of Act No. 530, General and Local Acts 1949, page 835.

2. Quarterly Report of Attorney General, Vol. 59, page 110, is overruled insofar as it conflicts with the conclusions reached herein.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion addressed to my predecessor is as follows:

"Re: Hospital Licensure Act

Act 530, 1949 Legislature

"Since the effective date of Act 530, 1949 Legislature (1 January 1950) a number of institutions, both state and privately owned, have expressed doubts as to the application of this Act to hospitals and infirmaries operated by them as a part of their overall operations. In practically all cases such infirmaries and hospitals are operated for the benefit of the students or inmates of these institutions. Many of the schools charge a fee for this service. These institutions include the following general classifications:

"1. State Teachers Colleges

2. Private Colleges and Universities

3. State Prisons

4. State Special and Corrective Schools

"Your attention is called to Section 1 of the Act which defined the words 'Hospitals' and 'person'. Particular Reference is made to the terms '. . . . . is primarily engaged . . . ' and '. . . . . in offering to the public generally . . . . '. Many of the subject institutions claim exemption from the act on the grounds that they are not primarily engaged in hospital service and/or that they do not offer such service to the public generally. With reference to Sections 2, 3, 4, and 5 of the Act several of the subject State Institutions have submitted applications for license but have failed to enclose the license fee.

"An official opinion is respectfully requested of the application of Act 530, 1949 Legislature, to the institutions mentioned above with specified regards to these questions.

"1. Do the hospitals and infirmaries operated by the above listed institutions come under the provisions of Act 530, 1949 Legislature?

"2. If the answer to Question 1 is in the affirmative, does the Act require that hospitals and infirmaries operated by these institutions obtain a license as provided in Section 2 of the Act?

"3 If the answers to Questions 1 and 2 are in the affirmative, does the Act require that the institutions pay to the State Board of Health the license fee provided in Section 5 of the Act?

"In case a negative answer is found applicable to anyone of the above classifications a separate opinion is requested on the remaining institutions."

In addition to your written inquiry above, I discussed this matter with the Hospital Advisory Board at its meeting during March, 1951.

In your inquiry, you have enumerated four classifications of institutions and asked whether or not hospitals operated by such institutions are subject to the licensing provisions of Act No. 530, General and Local Acts 1949, page 835. The classifications which you refer to; namely, (1) state teachers colleges, (2) private colleges and universities, (3) state prisons, and (4) state special and corrective schools, do not necessarily determine whether or not a hospital operated by an institution of one of those classifications is subject to the licensing provisions, for the reason that the mere name or classification of the institution does not state facts concerning the type of patients that is served by the hospital or the type of service offered by the hospital.

To begin with, there are express exemptions outlined in Section 2 of Act No. 530, supra, which exempt from the provisions of the Act (1) hospitals operated by the Federal Government, and (2) mental hospitals under the supervision of the Board of Trustees of the Alabama State Hospitals. Clearly, those two types of hospitals are not required to apply for or obtain a license under the provisions of Act No. 530, supra.

The hospital licensing act requires all hospitals as defined in said act, other than those expressly exempted as outlined above, to obtain a license and pay the fee required by the act. Sections 3, 4, and 5, Act. No. 530, supra. Therefore, if the hospital is not operated by the Federal Government and not a mental hospital under the supervision of the Board of Trustees of the Alabama State Hospitals, it is subject to the licensing provisions and must obtain a license and pay the fee if the hospital comes within the definition of "hospitals," as defined in Section 1 of Act No. 530, supra. This is true regardless of the institution which operates the hospital.

"Hospitals" are defined by Section 1 of the act, supra, as "sanatoria, rest homes, nursing homes and other related institutions when such institution is primarily engaged in offering to the public generally facilities for the diagnosis and treatment of injury, deformity, disease or obstetrical care." For the purposes of the act, therefore, and to determine whether a hospital is subject to the licensing provisions thereof, at least two things must be determined: (1) Is such institution primarily engaged in offering its services to the public generally, and (2) is the institution primarily engaged in offering facilities for the diagnosis and treatment of injury, deformity, disease, or obstetrical care? If the answer to both of these questions is in the affirmative, then the hospital is a "hospital" within the meaning of the act and must obtain a license.

In the third category listed in your inquiry, are hospitals operated by state prisons. Obviously, such hospitals do not offer their services to the public generally, but confine their services to inmates of the institution. I know of no prison in Alabama having a hospital which serves the public generally. For that reason then, hospitals operated by prisons, for inmates only would not be required to apply for or obtain a license under the provisions of Act No. 530, supra. This would be true even though such hospitals offered full facilities and were primarily engaged in the diagnosis and treatment of inquiry, deformity, disease or obstetrical care.

I think the same facts are true concerning categories No. 1, 2 and 4, listed in your inquiry. Most state teachers colleges, private colleges and universities, or state special and corrective schools, when such institution operate a hospital, operate those hospitals solely for the benefit or treatment of students and faculty. Such hospitals do not ordinarily serve the general public, although there may be exceptions in particular schools or colleges.

For the reason then that hospitals operated by such institutions are not primarily engaged in offering to the public their facilities, such hospitals would not be subject to the licensing provisons of Act No. 530, supra.

On the other hand, if a school or college operates a hospital and accepts not only students and faculty, but also accepts regularly as patients members of the general public, then such hospital, even though operated by a college or university, would come within the definition of "hospitals," as used in Section 1 of Act No. 530, supra. If, in addition to offering its services to the general public, the hospital operated by the school or college is primarily engaged in furnishing facilities for the diagnosis and treatment of injury, deformity, disease, or obstetrical care, such hospital must be licensed and the fee must be paid, even though it is operated by a college or university.

There may be some specific institutions which are agencies of the State of Alabama, which are exempt by statute or the Constitution from licensing provisions of taxation by the State. Those particular institutions must claim or assert their exemptions from the provisions of the Act and should point to the law exempting them. When such cases arise, a question of implied immunity from taxation in respect to the particular institution or hospital may be submitted to us. See Quarterly Report of Attorney General, Vol. 48, page 229; **State v. City of Montgomery,** 228 Ala. 93, 151 So. 856, and **State Tax Commission v. County Board of Education of Jefferson County,** 235 Ala. 388, 179 So. 197.

In arriving at the conclusions expressed in this opinion, I have considered a former opinion of the Attorney General, rendered June 12, 1950, Quarterly Report of Attorney General, Vol. 59, page 110. In that opinion, it was held that the Student Health Center, operated by the University of Alabama for the benefit of students only, and the Jefferson-Hillman Hospital in Birmingham, operated by the Board of Trustees of the University of Alabama as a teaching hospital for its four-year medical college, were required to obtain licenses under the provisions of Act No. 530, supra. The opinion referred to takes the position that only those hospitals expressly exempted by Section 2 of Act No. 530, supra, are exempt, and that all other hospitals are covered, so to speak, by the licensing provisions. In my judgment, the rule laid down in said opinion is in error and said opinion should be overruled. The Health Center at the University of Alabama is said to serve students only. Quarterly Report of Attorney General, Vol. 59, page 110. For that reason, it is my opinion that such student Health Center is not primarily engaged in offering its services to the public generally, and, hence, would not be subject to the licensing provisions of Act No. 530, supra.

As to the Jefferson-Hillman Hospital in Birmingham, I think that it is common knowledge that this hospital offers its services to the public generally. Further, I think that it is a commonly known fact that the Jefferson-Hillman Hospital is primarily engaged in offering facilities for the diagnosis and treatment of injury, deformity, disease, or obstetrical care. For that reason, the Jefferson-Hillman Hospital is subject to the licensing provisions of Act No. 530, supra, not for the reason that said hospital is not expressly exempted by the provisions of the act, as held in the opinion referred to, but because said hospital meets the definition of "hospital," as used in Section 1 of Act No. 530, supra.

The legislature has power to tax one state agency for the benefit of another. **State Tax Commission v. County Board of Education of Jefferson County,** supra. An inspection fee usually excludes the idea of governmental immunity. Quarterly Report of Attorney General, Vol. 48, page 229.

Insofar as the opinion of the Attorney General, rendered June 12, 1950, appearing in Quarterly Report of Attorney General, Vol. 59, page 110, is in conflict with the views herein expressed, said opinion is hereby overruled.

In conclusion, therefore, all hospitals, except those expressly exempted by the terms of the act, which are hospitals operated by the Federal Government and mental hospitals under the supervision of the Board of Trustees of the Alabama State Hospitals, are required to be licensed and pay the license fees, if such hospitals (1) serve the general public, and (2) are also primarily engaged in offering facilities for the diagnosis and treatment of injury, deformity, disease, or obstetrical care.

There may be certain institutions which may claim an express or implied governmental immunity from the payment of the tax or licensing fees, but each of those institutions should be treated separately.

Yours very truly,

SI GARRETT

Attorney General

June 25, 1951

Hon. Ralph P. Eagerton

Chief Examiner

Department of Examiners of Public Accounts

Montgomery 4, Alabama

Sheriffs—Mileage—Costs and Fees.

1. A sheriff arresting two defendents at the same time and place necessitating one trip may claim mileage in respect to each under the provisions of Act No. 177, General Acts 1947, page 62.

2. A sheriff serving a writ of arrest issued jointly for two defendants may treat said writ as two writs, and is entitled to receive mileage under the provisions of Act No. 177, supra, for each defendant.

3. A sheriff arresting one defendant on several writs of arrest executed at the same time and place is entitled to claim mileage under the provisions of Act No. 177, supra, in respect to each writ.

4. Act No. 177, supra, is applicable only in the event that conviction follows arrest.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of May 16, 1951, is as follows:

"Section I of Act No. 177, General Acts 1947, page 62, reads as follows:

"'Any Sheriff of the State of Alabama, who serves or causes to be served a writ of arrest, or who causes to be arrested, or like process issued by any court of competent jurisdiction, in Alabama, in any criminal or quasi-criminal proceedings, shall be entitled, on conviction of the defendant, to receive for such survice a sum equivalent to ten cents per mile for each mile traveled within the county of the arrest from the court house by the most direct route to the point of arrest and return. Mileage for only one trip to make the arrest may be charged.'

"In regards to the above section, will you please give me your official opinion on the following questions.

"1. Is a Sheriff, operating under this statute, entitled to have mileage taxed as cost in his favor against each defendant when more than one defendant is arrested at the same time and at the same place, necessitating only one trip, when a warrant or writ has been issued for each defendant?

"2. If a warrant or writ is issued jointly for the arrest of two or more defendants is the Sheriff executing said warrant or writ, entitled to have arrest fees and mileage taxed against each defendant, when only one trip is made?

"3. When two or more warrants or writs of arrest are executed against one defendant at the same time at the same place, is the Sheriff entitled to have taxed as cost in his favor, mileage, as allowed by the statute in question, in each case against the defendant, even though only one trip was made?

"4. Should conviction not follow arrest, is the Sheriff entitled to collect this mileage from the County Fine and Forfeiture Fund?

"We have several audits now in progress in which the above questions have arisen. Please favor me with your opinion at your earliest convenience."

In answer to your first inquiry, you are advised that when the sheriff makes only one trip in order to serve two writs of arrest on separate defendants, he is nevertheless entitled to receive ten cents per mile in respect to each defendant if said defendants are later convicted. The practical operation of the statute may be considered in giving it a construction, and it is my opinion that the Legislature did not intend for one defendant to be taxed with the mileage costs while the other was not so taxed. It is further my opinion that the sheriff may claim his mileage of ten cents per mile under the provisions of Section 1 of Act No. 177, General Acts 1947, page 62, even though he is fortunate enough not to be required to make but one trip. We have formerly held that when a sheriff conveys two or more insane persons by one single trip to the hospital, he is nevertheless entitled to receive ten cents per mile for each insane person. See Quarterly Report of Attorney General, Vol. 49, page 118. We think that the same rule should apply when

a sheriff is required to travel and make two arrests at the same time and place, even though only one trip is required.

Your inquiry number 2 is also answered in the affirmative, for the reason that a warrant or writ of arrest issued jointly for the arrest of two or more defendants may be considered as two separate warrants since each defendant must be served and taken into custody.

In answer to your third inquiry, I am of the opinion that when several warrants are executed against one defendant at the same time and at the same place, the sheriff is entitled to receive ten cents per mile for each warrant, even though there is only one defendant. As above stated, the sheriff is entitled to have taxed as costs in each case the mileage fee as prescribed by Section 1 of Act No. 177, supra. Opinions of the Attorney General, Office Edition, Vol. 5-A, page 170.

In answer to your inquiry number 4, it is my opinion that Section 1 of Act No. 177, supra, requires the conviction of the defendant before the sheriff is entitled to receive his mileage. The above Section 1 provides in part that the sheriff shall "be entitled, on conviction of the defendant, to receive for such service a sum equivalent to ten cents per mile." In my judgement, the conviction of the defendant is a condition which must be met before the sheriff may claim the mileage therein provided.

Yours very truly,

SI GARRETT

Attorney General.

June 25, 1951

Hon. Nell Jo Reagan

Acting Judge of Probate

Etowah County

Gadsden, Alabama

Bails—Bonds.

The requirements of Title 51, Section 201, Code of Alabama 1940, as amended by Act No. 199, General and Local Acts of Alabama 1949, page 230, include, for those engaging in the business of making bonds and charging therefor, other than corporations qualified to do a bonding business in the State, an additional requirement that the bail bondsman furnish bond as required to be approved by the probate judge of the county in which such person is engaged in the business of so making bonds, and this aditional requirement calls for the approval of the bond by the probate judge in each county in which the bondsman so engages in the business of making bonds and charging therefor.

Opinion by Assistant Attorney General Nachman.

Dear Mrs. Reagan:

Your request for an official opinion, bearing date of March 6, 1951, is as follows:

"As Probate Judge of Etowah County I hereby request an opinion by the office of the Attorney General construing Section 201, Chapter 9, Title 15, Code of Alabama 1940, as amended by Act No. 199 of July 8, 1949 relating to bail under the following facts and circumstances:

"There has recently been an application made to this office for a license to engage in the business of making bonds and charging therefor by a company that is now doing business in Anniston, Alabama, Calhoun County. However, this company is not incorporated. They have made bond in Calhoun County in the amount of $10,000.00 which has been approved by the Probate Judge of Calhoun County according to the above mentioned Section and Act as amended. This office desires your opinion as to whether or not under said Section as amended a person engaged in the business of making bonds and charging therefor has to make a $10,000.00 bond in each county in which he does business as a bail bondsman or whether a single $10,000.00 bond is sufficient for the carrying on of business in more than one county or throughout the State.

"It is respectfully requested that an opinion be given on this matter as quickly as possible since the interested party is prepared to pay his license fee and begin his busines of making bonds immediately. This will be delayed pending your opinion."

The provisions of Title 15, Section 201, Code of Alabama 1940, as amended by Act No. 199, General and Local Acts of 1949, page 230, require that persons engaging in the business of making bonds and charging therefor, if such persons are not corporations qualified to do a bonding business in the State, furnish bond with a corporate surety in the amount of $10,000 "to be approved by the Probate Judge of the county in which such person is to engage in the business of so making bonds, ..." This requirement is in addition to the other requirements of Section 201, supra, as amended.

The plain meaning of Section 201, as amended, supra, is that the probate judge in each county in which the professional bondsman does business must approve a bond posted with a corporate surety in the amount of $10,000, etc., as required. If the probate judge approves a bond already approved by another probate judge of a different county, then presumably a new bond need not be posted. However, your attention is called to an opinion of this office to the Hon. Tom C. Garner, Judge of Probate of Jefferson County, Alabama, released on December 4, 1950 (Ms.), a copy of which is enclosed for your convenience. This opinion held that professional bondsmen must at all times be bonded in the amount of $10,000. It is incumbant upon you, as probate judge, to make certain that the bondsman in question is himself bonded in such manner before approving his bond.

Very truly yours,

SI GARRETT

Attorney General.

June 25, 1951

Hon. Nell Jo Reagan

Acting Judge of Probate

Etowah County

Gadsden, Alabama

Cooperatives—Taxation—Licenses—Exemptions.

1. Agricultural Cooperative Associations organized under Title 2, Sections 115-133, Code of Alabama 1940, selling orange drink mixture, are not exempt from payment of bottler's license levied by Title 51, Section 476, Code of Alabama 1940, as amended by Act No. 504, General Acts 1945, page 729, unless such associations are bottling and marketing such drink for a member or a nonmember who produces the agricultural product from which the drink is made.

2. Agricultural Cooperative Associations are not authorized to market nonagricultural products, and such associations are without authority to market agricultural products for members or nonmembers, unless such products are produced by such members or nonmembers.

3. Title 2, Section 129, Code of Alabama 1940, does not exempt agricultural cooperative associations organized under Sections 115-133, supra, from the payment of a license, unless the business engaged in for which the license is levied is an authorized business of the association.

Opinion by Assistant Attorney General Miller.

Dear Mrs. Reagan:

A request for an official opinion from your predecessor to my predecessor, bearing date of December 29, 1950, is as follows:

"Etowah Dairies was incorporated as a co-operative association under the provisions of Section 115, et seq., Title 2, Code of Alabama, on December 30, 1947, as shown by Articles of Incorporation filed in Corporation Record 'G', page 375, in this office.

"The principal business of the co-operative is the bottling and sale of milk and dairy products, however, in the operation of its business, it produces for sale at certain seasons of the year an imitation orange juice. The juice is bottled on the milk bottling machine and in the same bottles used in bottling milk.

"The License Inspector has cited the co-operative for the payment of the license provided under Section 476, Title 51, of the code. The co-operative has refused to pay the license on the theory that it is exempt from the payment of said license under the provisions of Section 129, Title 2, of the code.

"Will you please give me your opinion as to the liability of the co-operative for the payment of the license claimed under Section 476, Title 51 of the code."

It is my opinion that the agricultural cooperative marketing association referred to in your inquiry is subject to the payment of the license levied by the provisions of Title 51, Section 476, Code of Alabama 1940, as amended by Act No. 504, General Acts 1945, page 729, unless this cooperative association is bottling and marketing the orange drink mixture for a member or nonmember of the association who produces oranges, the basic agricultural commodity from which the principal ingredient of this drink is derived.

Your inquiry indicates that the cooperative marketing association referred to therein is organized under the provisions of Title 2, Section 115-133, Code of Alabama 1940, the statute which authorizes the organization of co-operative marketing associations by producers of agricultural products primarily for the purpose of marketing their agricultural products, and purchasing equipment and supplies used in connection with the production of such agricultural products. Title 2, Section 129, supra, of this statute exempts agricultural cooperative associations organized thereunder from the payment of certain taxes, licenses or privilege fees. Therefore, the question presented by your inquiry is whether Section 129, supra, exempts the cooperative organization referred to in your inquiry from the payment of the privilege license tax levied on soft drink bottlers by Section 476, as amended, supra, which reads, in pertient part, as follows:

"Each person engaged in manufacturing, producing or bottling in bottles or other containers*** **fruit juices or imitations thereof***, shall not use any machine, machines or apparatus for the filling or bottling of the same until such person shall have first *** obtained *** a license ***." (Emphasis added.)

It seems clear that the above quoted statute levying a license applies to the operation engaged in by the cooperative association referred to in your inquiry, unless such cooperative is exempted from the payment of this license under the provisions of Section 129, supra, which reads, in pertinent part:

"Any corporation or association organized hereunder shall pay to the state the annual permit fee of ten dollars required by law, ***; nor shall such corporation be liable for any other license or privilege fee or tax for the purpose of engaging in or transacting business, or otherwise, in this state."

A former opinion of this office, which construes the provisions of the above-mentioned tax exemption statute, is to the effect that agricultural co-operative marketing associations organized under Act No. 220, General Acts 1935, page 604, now codified as Title 2, Sections 115-133, supra, are not exempted from the payment of the privilege license tax levied for the sale of such commodities as tobacco (not grown by its members) and soft drinks, since the sale of such commodities are not authorized by the statute, and are, therefore, beyond the powers of the cooperatives, or "ultra vires." Quarterly Report of Attorney General, Vol. 11, p. 51.

The question was before the Supreme Court of Virginia in the case of **Rockingham Cooperative Farm Bureau, Inc., vs. City of Harrisonburg,** 171 Va. 339, 198 S. E. 908, in which a municipality sought to collect a privilege license from an agricultural cooperative association for the sale of drygoods, groceries, household supplies, and other articles of merchandise. The cooperative tax exemption statute of that state is substantially similar to the Alabama

exemption statute. After holding that agricultural cooperative marketing associations were not authorized to engage in the sale of the commodities in question, the court declared in the following language, which is quoted from the opinion of the trial court, that the association was not exempted from the payment of the privilege license:

> "'**It is the authorized business of the association to which the exemption attaches and not to the association as such, independent of the character of business carried on by it. Therefore, if and when an association goes beyond its powers and deals in a class of merchandise not authorized by the Act, it cannot escape assessability and should properly be taxed as a general merchant, to the extent, at least, of its unauthorized sales.** As to such sales, the association is doing a business which by law is required to be licensed by the State *** and on which *** any city or town may impose a tax for the privilege of doing, and require a license therefor.'"

> "' *** **The legislature had no intention of exempting the association from license taxes, State or city, for the conduct of a business not authorized by the Act** and when the fact that such business is carried on is established, assessability is fixed, ***.'" (Emphasis added.)

Both the former opinion of this office and the Virginia case, supra, deal with a situation where a corporative marketing association is supplying or selling to its members and others certain commodities which purportedly were sold under the provisions of the statute authorizing the purchase of such supplies for its members and others.

The marketing activity of the cooperative association which is described in your inquiry involves a situation where the cooperative marketing association is marketing a commodity. Therefore, to answer your question, it is necessary to determine whether Sections 115-133, supra, authorize the sale of the commodity in question. Oranges, the basic agricultural product from which the principal ingredient of this drink is derived, are unquestionably an agricultural product under the definition of agricultural products set out in Section 130 of the statute, supra, which definition states that "agricultural products shall include *** fruits". It, therefore, clearly appears that the cooperative association is, by the statute under which it is organized, authorized to market this product. It seems equally clear, however, that the marketing of such a product must be done for a member or nonmember **who is a producer of this agricultural product.** Section 115, supra, declares that the purpose of the statute, is, among others, "to enable **producers** of agricultural products, *** to cooperate in the production, processing, *** and marketing of agricultural products, ***." Section 121 of this statute limits membership in organizations organized thereunder to producers of agricultural products, and a review of the entire statute indicates that all rights, powers, privileges, and immunities given to members or nonmembers of cooperative associations are for producers of agricultural commodities, and nowhere in this statute is authority found to market products of nonproducers. It, therefore, appears that agricultural cooperative marketing associations organized under Sections 115-133, supra, are without authority to market agricultural products for nonproducers of such products.

Applying the principle announced in the former opinion of this office, supra, and the case of **Rockingham Cooperative Farm Bureau, Inc., vs. City of Harrisonburg,** supra, which principle is that "'It is the authorized business of the association to which the exemption attaches and not to the association as such, independent of the character of business carried on by it,'" my opinion is that the cooperative organization referred to in your inquiry is not exempted from the payment of the license levied by the provisions of Section

476, as amended, supra, unless the drink which it bottles and markets is marketed for a producer of the agricultural product (oranges), which is the basic ingredient from which the drink mixture is made. In this connection, it should be pointed out that under the provisions of Sections 115-133, supra, an association of producers and a federation of such associations are considered to be producers.

It should also be observed that associations may market the agricultural products produced by nonmembers as well as such products of members, provided such associations do not deal in the agricultural products of nonmembers in an amount greater in value than such as are handled by or for members. Title 2, Section 123, Code of Alabama 1940. See Quarterly Report of Attorney General, Vol. 7, p. 36.

Yours very truly,

SI GARRETT

Attorney General.

June 26, 1951

Hon. Walter B. Jones

State Geologist and Oil and Gas Supervisor

University, Alabama

State and State Departments—Oil and Gas—Funds.

Appropriate contribution to the Interstate Oil Compact Commission may be made from the Oil and Gas Fund under the provisions of Act No. 1, General Acts 1945, page 1, as such contribution would be for effectuating the purposes of said act.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion, bearing date of April 24, 1951, is as follows:

"It is requested that you render an opinion on the legality of contributing from our Oil and Gas Funds to the Interstate Oil Compact Commission.

"Heretofore, the state's contribution has been made from the Governor's Contingent Fund. Governor Persons has suggested that our allotment be paid from the Oil and Gas Fund if it can be legally done. As you know, the Oil and Gas Fund is derived from a 2% production tax for the purpose of administering the Oil and Gas Act. The Interstate Oil Compact Commission rendered much help in the actual writing of our oil and gas laws, and rules and regulations promulgated thereunder. Since then we have received much help from the Commission.

"Alabama has been a member of the Compact for several years. No assessments are made against member states. Participation is entirely voluntary. The Governor or his representative sits at the counsel table at each of the quarterly meetings of the Compact and thus takes part in the proposed work program and the expenditure of funds available to the Compact.

"The statutes direct that the expenditure from the Oil and Gas Funds shall be made only upon approval of the Governor.

"It is unlikely that any detailed system of accounting could reasonably be made of our money, however, we would have a receipt for a lump sum, together with the quarterly financial reports of the Compact on its overall expenditures. It is assumed that this would satisfy the examiner of accounts.

"May I add that I heartily endorse the proposal as being both sound and advisable from my own viewpoint as State Oil and Gas Supervisor and Secretary of the Oil and Gas Board. Sometime our wishes and desires do not conform to legal requirements and directives."

In answer to your inquiry, it is my opinion that the contribution in question to the Interstate Oil Compact Commission may legally be made from the "Oil and Gas Fund."

The Title of Act No. 1, General Acts 1945, page 1, is as follows:

"To conserve natural resources of the State of Alabama and to prevent the waste thereof by providing for the regulation, control, and supervision of the drilling for and the production of oil and gas in the State of Alabama and to provide funds therefore by the levy of a charge of twenty-five dollars upon each well drilled in search of oil and gas in Alabama and a tax equal in amount to two per cent of the gross value, at the point of production, of oil and gas produced in Alabama."

Section 1 of this act, further expressing its purposes, is in the following language:

"Section 1. In recognition of past, present, and imminent evils occuring in the production and use of oil and gas, as a result of waste in the production and use thereof and as a result of waste in the absence of coequal or correlative rights of owners of crude oil or natural gas in a common source of supply to produce and use the same, this law is enacted for protection against such evils by prohibiting waste and compelling ratable production."

The limitations as to the use of the funds collected under the act is contained in Section 32 thereof, which reads as follows:

"Section 32. All moneys collected under the provisions of this Act shall be paid into the State Treasury and there kept separate from other State funds in a fund to be known as the 'Oil and Gas Fund.' Such 'Oil and Gas Fund' shall be expended by the Oil and Gas Supervisor, with the approval of the Governor, **only for effectuating the purposes of this act.**" (Emphasis supplied.)

The question presents itself as to whether an appropriate contribution to the Interstate Oil Compact Commission would be for "effectuating the purposes of this Act." In my judgment, this query should be answered in the affirmative; such would come within the purview of the purposes expressed in both the title and Section 1 of Act No. 1, supra. Cf. Quarterly Report of Attorney General, Vol. 37, page 79; Quarterly Report of Attorney General, Vol. 11, p. 67.

Act No. 1, supra, appears in the 1949 Cumulative Pocket Part of the Code of Alabama 1940 as Title 26, Sections 179(27)-179(55).

Yours very truly,

SI GARRETT

Attorney General.

June 26, 1951

Hon. Earl M. McGowin

Director of Conservation

Department of Conservation

CAPITOL

Statutes — Appropriations — Conservation, Departments of.

The entire amount of Twenty Thousand Dollars conditionally appropriated for the "construction of a canal from the Gulf of Mexico to Little Lagoon and for use in connection with the improvement of Perdido Pass in Baldwin County" may be used for the improvement of Perdido Pass.

Opinion by Assistant Attorney General Johnson.

Dear Sir:

Your request for an official opinion, bearing date of January 26, 1951, is as follows:

"On the 29th day of September, 1947, the Governor approved an Act of the Alabama Legislature, No. 486 H419—Brannan, which made a conditional appropriation of $20,000.00 for the construction of a canal from to Gulf of Mexico to Little Lagoon, and for use in connection with Perdido Pass in Baldwin County, Alabama. The above Act may be found on page 336 of the 1947 General Acts of Alabama.

"Since the passage of this Act, we have had many conferences with the U. S. Corps of Engineers and engineering companies to discuss the administration of this Act. Our department even went so far as to advertise for bids which would cover the construction of the canal from

the Gulf of Mexico to Little Lagoon. No bids were received because the cost of such a project, according to the engineers, would far exceed the conditional appropriation.

"There is now a project proposed which would improve Perdido Pass. Alabama Point is undergoing constant erosion which is detrimental to the Pass. We believe that the $20,000.00, if it can be obtained, together with other monies which we believe will be put into the project, will go far toward the improvement of Perdido Pass, as required by the above cited Act.

"I should like to have your official opinion if, under the circumstances which I have mentioned above, the Department of Conservation could expend the entire appropriations upon the improvement of Perdido Pass, leaving the construction of a canal from the Gulf of Mexico to Little Lagoon to some subsequent Legislature, with the hopes of obtaining an adequate appropriation therefor."

It is my opinion that your inquiry should be answered in the affirmative.

In answering your question, I deem it advisable to quote in full Section 1 of Act No. 486, General Acts 1947, page 336, referred to in your request:

"Section 1. That there is hereby appropriated the sum of Twenty Thousand and no/100 ($20,000.00) Dollars conditioned upon the condition of the State Treasury and the approval of the Governor out of any monies in the State Treasury not otherwise appropriated to be used by the Department of Conservation for the construction of a canal from the Gulf of Mexico to Little Lagoon and for use in connection with the improvement of Perdido Pass in Baldwin County, Alabama. The funds hereby appropriated shall be paid out by the Treasurer of the State of Alabama upon the requisition or order of the Director of Conservation."

As I read the above quoted section, the sum of Twenty Thousand Dollars was appropriated for a dual purpose; namely, (1) for the construction of a canal from the Gulf of Mexico to Little Lagoon, and (2) for the improvement of Perdido Pass. No specific amount of the total appropriation was designated by the Legislature to accomplish either purpose, but the entire amount was to be used for both projects. Since it now appears that the amount of the appropriation is insufficient to accomplish both purposes for which it was intended, it is my opinion that the appropriation may be used for either purpose, i. e., for the construction of the canal, or for the improvement of Perdido Pass. To hold otherwise would defeat the purpose of the statute.

The conclusion reached herein is supported by many decisions of the Supreme Court of this State, which hold that courts in construing a statute, may consider the purposes for which the statute was enacted and give it the construction which will best effectuate the purpose of the Legislature in passing it. **Richardson Lumber Company v. Howell,** 219 Ala. 328, 122 So. 343, **General Motors Acceptance Corporation v. Crumpton,** 220 Ala. 297, 124 So. 870; **Nunez v. Borden,** 226 Ala. 381, 147 So. 166; **Abramson v. Hard,** 229 Ala. 2. 155 So. 590; **Lynn v. Boyles Furniture Company,** 3 Ala. App. 634, 57 So. 122.

You are, therefore, advised that the entire amount of Twenty Thousand Dollars appropriated by Act. No. 486, supra, may be used for the improvement of Perdido Pass in Baldwin County, Alabama.

Very truly yours,
SI GARRETT
Attorney General

June 26, 1951

Hon. Lester L. Holley

Sheriff of Elmore County

Wetumpka, Alabama

Sheriffs — Costs and Fees.

In claiming Circuit Court fees from the fine and forfeiture fund, under the provisions of Title 15, Section 394, Code of Alabama 1940, the sheriff may include in such claim his fees which have accrued in a Justice of the Peace Court.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, dated February 27, 1951, is as follows:

"Please give me your opinion on the following question at your earliest convenience.

"When I am writing up fine and forfeiture claims due me in Circuit Court wherein fees have been listed on the docket sheet by the Circuit Clerk from the Justice of the Peace Court, may I collect or write a claim for my fees that accumulated in the Justice Court also? In some instances, a defendant is arrested and fees are listed on the transcript by the Justice of the Peace, and then in Circuit Court he might not have to be re-arrested—the bond is not raised by the Court, etc. Then may I write a fine and forfeiture claim for this amount, the arrest fee and other costs accumulated in Justice of the Peace Court?"

In my opinion, the sheriff may list his fees which have accrued in the Justice of the Peace Court when he writes up his claims for costs in the Circuit Court.

Sheriffs, when claiming fees from the fine and forfeiture fund of the county in cases provided for in Title 15, Section 393, and Title 11, Section 83, Code of Alabama 1940, prepare their claims under oath as required by Title 15, Section 394, Code of Alabama 1940. See also Title 11, Section 83, Code of Alabama 1940.

After the case has reached the Circuit Court, there are certain costs which have accrued in the Justice of the Peace Court. Such fees follow the case into the Circuit Court and are taxed as other costs. Biennial Report of Attorney General, 1928-30, page 194. In that opinion, it is stated:

"I am of the opinion that the sheriff's fees in a preliminary hearing, that is his fee for guarding the prisoner and for the arrest made upon process issued by the magistrate, follow the case into the Circuit Court and are there taxed as other costs, in the event of an acquittal the same become a charge against the fine and forfeiture fund of the county.

"McPherson v. Boykin, 76 Ala. 602

Bilbo v. Drakeford, 78 Ala. 322.

Hawkins v. State, 124 Ala. 105

Stone v. Holcombe, 197 Ala. 293."

Since these costs in the Justice of the Peace Court follow the case to the Circuit Court, it is my opinion that the sheriff may properly list such sheriff's fees as have accrued in the Justice of the Peace Court, when the sheriff makes his claim against the fine and forfeiture fund after the case has been disposed of in the Circuit Court.

Very truly yours,

SI GARRETT

Attorney General

June 26, 1951

Hon. W. G. Pruett, Highway Director

State Highway Department

CAPITOL

Highways and Highway Departments — Rights of Way.

The Highway Department of the State of Alabama has the authority to secure additional rights of way, contiguous to existing rights of way, to be used for roadside parks.

Opinion by Assistant Attorney General Johnson.

Dear Sir:

Your request for an official opinion, bearing date of February 9, 1951, is as follows:

"Your official opinion is requested as to whether this department may secure additional right-of-ways to be used for roadside parks through negotiations with the property owners or through condemnation proceedings.

"Recently the State Highway Department has placed several roadside parks within the limits of existing highway right-of-way. On some occasions additional land is required outside the existing highway right-of-way to construct these roadside parks in order to make them usable by the public."

Your inquiry is answered in the affirmative.

Your desirability of establishing certain small parcels of land along the highways of the nation, to be used by the traveling public as places in which to park their automobiles while they rest and refresh themselves before resuming their travels, has long been recognized. That this is true is evidenced by the many such parks now existing beside the more important highways of this and other states. One of the most useful purposes served by such roadside parks is their contribution to the safety of the traveling public in providing a safe place off the highway in which a motorist can stop without subjecting himself to the dangers of other vehicles traversing the highway.

Title 23, Section 25, Code of Alabama 1940, as amended by Act. No. 283, General and Local Acts 1949, page 407, grants to the Highway Department of the State of Alabama the authority to obtain such rights of way for public roads as may be deemed necessary by the Highway Department, either by outright purchase or by the exercise of the right of eminent domain. This authority is limited only to the extent that such property as is taken must be devoted to public use, and that the Highway Department must exercise, its descretion reasonably. See Bienniel Report of Attorney General 1928-1930, page 804.

Since the use of the roadside parks in question will be available to the public to the same extent as are the roads along which they are situated, and since the establishment of such parks is in accord with the constant program of the Highway Department of promoting safety upon the highways of this State, it is my opinion that the Highway Department has the right to secure additional rights of way, contiguous to the existing rights of way, to be used for roadside parks.

Very truly yours,

SI GARRETT

Attorney General

June 26, 1951

Hon. M. R. Joiner, Register

Circuit Court, Equity Division

Talladega County

Talladega, Alabama

Registers — Costs and Fees —

A register selling a condemned automobile for carrying prohibited liquors and receiving a fee for making the sale, under provisions of Title 11, Section 27, Code of Alabama 1940, is not entitled to receive an additional fee of five per cent under the provisions of Title 11, Section 22, Code of Alabama 1940, for collecting and remitting the proceeds to the State of Alabama.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of May 18, 1951, is as follows:

"As Register, am I entitled to 5% as compensation for the collection and remittance of sums of money due the State of Alabama from the sale of condemned automobiles?

"I am aware that I am entitled to a small commission for selling the automobile as part of my fee as **Register.** That commission of 1½ to 2% is covered under Title 11-27, as my fee as Register for procuring a sale and auctioneering the automobile. Under Title 11-22, the 5% allowable for the collection and remittance of the same for the State of Alabama,' an entirely, distinct and separate payment for work performed by the Register for the State of Alabama. Under an opinion of the Attorney General, July-September 1938, a Clerk (or a Register ?) is entitled to commissions on all monies transmitted by him to the State or any Department of the State. Monies remitted from this office would be remitted direct to the Law Enforcement Fund, a Department of the State of Alabama.

"During the period of my last examination by the State Examiners, I had retained 5% of the amount due the State from the sale of condemned automobiles. At the close of the examination, I was allowed to retain on deposit 5% out of the gross amount due the State of Alabama, pending an opinion from your office."

In my opinion, you are not entitled to the five per cent commission for collecting and remitting a sum of money to the State of Alabama for the sale of condemned automobiles.

This office has heretofore held that when the register receives a fee for making a sale under the provisions of Title 11, Section 27, Code of Alabama 1940, he is not entitled to receive an additional five per cent for collecting and remitting the proceeds of the sale to the State of Alabama. Quarterly Report of Attorney General, Vol. 25, page 143.

The opinion appearing in Quarterly Report of Attorney General, Vol. 12, page 153, referred to in your inquiry, has no application to the question presented by your inquiry.

Very truly yours,

SI GARRETT

Attorney General

June 26, 1951

Hon. N. J. Bell, III, Chairman

Water Works Board

City of Montgomery

Montgomery County

Montgomery, Alabama

Municipalities — Bonds — Contractors — Public Utilities.

1. The installation of water mains for use by the inhabitants of a city is a "public work" within the meaning of Title 50, Section 16, Code of Alabama 1940, requiring a performance bond of a contractor.

2. The Water Works Board of the City of Montgomery, a corporation organized pursuant to Title 37, Section 394, Code of Alabama 1940, as amended by Act No. 686, General and Local Acts 1949, page 1057, is a subdivision of a municipal corporation within the meaning of Title 50, Section 16, Code of Alabama 1940, requiring contractors with such subdivisions to enter into a performance bond for the completion of public works.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of May 14, 1951, is as follows:

"The Water Works Board of the City of Montgomery is a Corporation organized pursuant to the provisions of Title 37, Section 394, et seq. of the Code of Alabama of 1940.

"The Water Works Board of the City of Montgomery, a corporation, has from time to time in the past, and contemplates in the future, entering into a contract with an independent contractor for the installation of water mains in the City of Montgomery, which contract will provide for a contract price of an agreed amount per foot, with provision for retainage of a very substantial part of the contract price on each contract until satisfactory completion of the contract.

"Will you please render us your opinion as to whether or not the Water Works Board of the City of Montgomery is subject to the provisions of Title 50, Section 16, et seq. of the Code of Alabama of 1940, which provides for the execution of a performance bond on the part of any person, firm or corporation entering into a contract with the State or any County or Municipal Corporation or subdivision thereof in this State, for the repair, construction or prosecution of any public buildings or public work."

I am of the opinion that the Water Works Board of the City of Montgomery is subject to the provisions of Title 50, Section 16, Code of Alabama 1940, which requires the execution of a performance bond on the part of any

person, firm, or corporation entering into a contract with a subdivision of a municipal corporation for the construction of public works.

In order to answer your inquiry, it is necessary to consider two questions: (1) Is the installation of water mains in the City of Montgomery "public work" within the meaning of Section 16, supra? (2) Is the Water Works Board of the City of Montgomery a subdivision of a municipal corporation within the meaning of Section 16, supra?

I am of the opinion that both of the above questions should be answered in the affirmative.

Water works are considered as public works. 35 Words and Phrases, (Per. Ed. Public Works, page 438; 43 Am. Jur., Public Works and Contracts, Section 2.)

•

It is my opinion that the Water Works Board of the City of Montgomery is a subdivision of a municipal corporation within the meaning of Section 16, supra. Although the Water Works Board of the City of Montgomery may be incorporated by three natural persons, the consent of the city is required before such corporation is organized. Title 37, Section 394, Code of Alabama 1940, as amended by Act. No. 686, General and Local Acts 1949, page 1057. The city governing body elects the directors of the corporation who are the governing body of the corporation. Title 37, Section 397, Code of Alabama 1940, as amended by Act No. 572, General Acts 1943, page 575. The Water Works Board of the City of Montgomery possesses the power of eminent domain. Title 37, Section 398, Code of Alabama 1940, as amended by Act No. 686, supra. When all of the indebtedness of said corporation is paid, title to the property of the corporation vests in the city and the corperation is automatically dissolved. Title 37, Section 400, Code of Alabama 1940, as amended by Act No. 686, supra.

These qualities or features of the Water Works Board of the City of Montgomery indicate to me that the corporation is of a public nature, and that said corporation is an arm or an administrative agency of the City of Montgomery. Being such an arm or administrative agency of the City of Montgomery, I conclude that said corporation is a subdivision of the City of Montgomery within the provisions of Section 16, supra.

It is true that the indebtedness of the Water Works Board of the City of Montgomery is not the indebtedness of the city within the meaning of Section 222 or Section 225 of the Constitution of Alabama 1901, since the municipal corporation and Water Works Board are separate. **Smith v. Water Works Board of the City of Cullman,** 234 Ala. 418, 175 So. 380. But, the fact that the debt of a quasi public corporation is not the debt of the parent governmental unit does not prevent the administrative agency or quasi governmental corporation from being subject to the provisions of laws requiring contractors with such agencies to execute performance bonds. **Benson Paint and Varnish Co. v. American Surety Co.,** 225 Ala. 353, 142 So. 767.

In the **Benson** case, supra, which was a suit by a materialman on a bridge bond to secure a contract with the Alabama Bridge Corporation, it was held that the provisions of Section 28, et seq., Act No. 347, General Acts of 1927, page 348, would be applied to the bond executed by the contractor. It is well to point out that the Alabama Bridge Corporation was held to be an agency of the State of Alabama, insofar as the requirement of a contractor's bond is concerned. I believe that the Water Works Board of the City of Montgomery bears a relation to the City of Montgomery similar to the relationship between the Alabama State Bridge Corporation and the State of Alabama.

For the above reasons, therefore, I am of the opinion that the contractor entering into a contract with the Water Works Board of the City of Montgomery for the installation of water mains should comply with the provisions of Title 50, Section 16, Code of Alabama 1940.

Very truly yours,

SI GARRETT

Attorney General

June 26, 1951

Hon. W. G. Pruett

Highway Director

State of Alabama

CAPITOL

Highways and Highway Department — Contracts.

1. The Highway Director, by mutual agreement with a contractor, may cancel a contract previously made between the parties.

2. A mutual agreement between the Highway Director and a contractor to rescind, cancel, or terminate a contract should be approved by the Governor.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of June 1, 1951, is as follows:

"During the World War II period, as you know, the allocation of critical materials for highway construction was very rigid. The securing of material for highway construction during this period delayed and/or stopped construction on various highway projects. The State Highway Department and the various contractors are becoming uneasy about the present period in reference to the securing of critical highway construction material. It appears that certain material, such as steel, is requiring an unusually long time to secure. This, no doubt, may affect the completion of some construction project within a reasonable time.

"In view of the above, the State Highway Department requests your official opinion on the following questions:

"1. Does the Highway Department at the present time have the legal right through its Director to cancel a contract by mutual agreement between the contractor and the Highway Department?

"2. If the answer to question No. 1 is in the negative, does the Department have a right to place a special provision in the contractor's proposal for bidding on construction work, stating that the contract may be cancelled upon mutual agreement between the contractor and the Highway Department through its Highway Director? Thus, making cancellation of contracts by mutual agreement possible."

In my opinion, there is no reason why the Highway Department through its Director may not, by mutual agreement, cancel a contract entered into with a contractor for the construction, repair, or maintenance of roads and bridges.

It is also my opinion that the Department has the right to place a special provision in the contractor's proposal for bidding on construction work, stating that the contract may be cancelled upon mutual agreement between the contractor and the Highway Department through its Director.

I suggest that any mutual agreement between a contractor and the Highway Department rescending, terminating, or concelling a contract for the construction, repair, or maintenance of roads and bridges should be approved by the Governor of Alabama. See Title 23, Section 24, Code of Alabama 1940.

Very truly yours,

SI GARRETT

Attorney General

June 26, 1951

Hon. John M. Gallalee,

President, University of Alabama,

University, Alabama.

University of Alabama — Colleges and Universities — Appropriations.

The comptroller has no authority to pay over to the University of Alabama, for the benefit of the Medical College of Alabama established and created under the provisions of Act No. 89, General Acts 1943, page 89, the balance of $22,483.30 of the $25,000.00 appropriated by Section 4 of said act for the payment of the actual expenses of the building commission created under Section 2 of said act.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of April 24, 1951, is as follows:

"Your opinion, as Attorney General, is respectfully requested on the following matter:

"I quote an excerpt, being the final sentences, of Section 4, General Acts of 1943, Page 92, providing a $25,000.00 appropriation to cover expenses of the Building Commission for the Four Year Medical School, as follows:

" 'For the purpose of paying the expenses of the building commission created by this act there is hereby appropriated from the treasury of the State of Alabama, out of any funds not otherwise appropriated, the sum of twenty-five thousand dollars ($25,000.00). This amount shall be used, and shall be expended upon order of the Governor, in payment of actual expenses of the commission, or any member thereof, in the discharge of the duties imposed upon it, or upon him by this act.'

"I also draw your attention to Section 2, Page 90, of said act.

"I find, upon investigation, there is a balance in the State Treasury of $22,483.30 from said appropriation after payment of the specified expenses. It seems to us that under the above section (Sec. 2, Page 90) this unexpended balance can very properly be paid to the University of Alabama for the use of the medical College.

"The question on which we desire your opinion is, therefore, whether the Comptroller is legally authorized to pay over to the University of Alabama the said balance of $22,483.30 for the benefit of the Medical College of Alabama?"

Act No. 89, General Acts 1943, page 89, created and established a four-year medical school in the State of Alabama, to be under the sole management and control of the Board of Trustees of the University of Alabama, and to be known as "The Medical College of Alabama."

Section 2 of Act No. 89, supra, created a commission "to be known as the building commission for the four-year medical school created and established in this act." It was provided in said section that:

"As soon as the commission may find it practicable and possible to complete its task, as set out above in this section, or to complete its task to such point that it may regard its duties and responsibilities discharged to sufficient extent to permit opening and beginning the operation of the medical school authorized in this act, it shall be authorized formally to turn over to the Board of Trustees of the University of Alabama for operation, conduct, and maintenance, the property, buildings, improvements, and equipment acquired, established, and constructed by the commission, in whatever form of conveyance will be lawful and legal, **such conveyance shall include the unexpended balance,** if there be any, for any further additions, supplies, or equipment, such balance to be expended by the Board of Trustees exclusively for the purposes specified and provided in Section 4 of this act as may be found necessary and needed by the said Board of Trustees of the University of Alabama." (Emphasis supplied.)

I assume that the commission has completed its task and has complied with the provisions of Section 2.

Section 4 of Act No. 89, supra, appropriated the sum of $1,000,000.00 as "a fund for acquiring land and for building and equipping the medical school," and provided in what manner the appropriation should be expended. This section further provided that:

> "If there should be any amount of said appropriation finally not withdrawn and consumed for the uses herein specified, such amount shall be released from the State treasury to the custody of the Board of Trustees, with the approval of the Governor, to be deposited in a reserve fund to be applied from time to time for building, supplies, and equipment for the medical school after the opening of the medical school; provided, that no part of this appropriation shall at any time be expended for any purpose other than acquiring lands for and the building and equipment of said medical school."

It is my conclusion that the "unexpended balance" referred to in Section 2, supra, which the commission must convey to the Board of Trustees of the University of Alabama, as required by said section, is the balance of the $1,000,000.00 appropriation not finally "withdrawn and consumed" for the uses specified in Act No. 89, supra.

Under the provisions of Section 4 of Act No. 89, supra, there was appropriated $25,000.00 for the payment of the actual expenses of the building commission, or any member thereof, incurred in the discharge of any duty imposed upon it or him by said act (this provision being quoted in your letter).

Your inquiry as to whether or not the comptroller is legally authorized to pay over the unexpended balance of the $25,000.00 appropriation to the University of Alabama for the benefit of the medical college raises the question of whether or not an appropriation made by the Legislature for one purpose may be legally expended for another purpose. In this connection, your attention is called to an opinion of this office in which it was held that an appropriation made by the Legislature for the payment of the salaries of the Supervisor of Rates and employees of the Bureau of Rates, and the expenses incurred in carrying out their duties, could not be used for any other purpose. Quarterly Report of Attorney General, Vol. 55, page 94. See also 42 Am. Jur., Public Funds, Section 79.

In **Opinion of the Justices,** 244 Ala. 632, 15 So. 2d 41, it was held that the State Treasurer could not, without legislative sanction, invest funds of the Alabama Special Educational Trust Fund Surplus Account in Federal securities redeemable at par with accrued interest in view of the Constitution of 1901, Section 72, which provides that "no money shall be paid out of the treasury except upon appropriation made by law, and on warrant drawn by the proper officer in pursuance thereof; . . . " In this case, the court quoted from the case of **Smith v. Speed,** 50 Ala. 276, as follows:

> "'. . . The provision (Section 72, supra) is mandatory to the treasurer, not to pay, and to the other executive officers, not to draw public money, except in pursuance of an appropriation made by law. It devolves on the general assembly the entire responsibility for the disbursement of the public moneys, and preserves its power over them, that it may be answerable to the responsibility. The legislative power raises the public revenue, and is supreme in its disposition, except so far as it may be restrained or limited by the constitution. In the absence of restraint, it is competent to direct when, where, and to whom the public revenue shall be paid. . . '"

In the instant case, the $25,000.00 appropriated by Section 4, supra, was appropriated for a specific purpose; and it is my conclusion that the expenditure of any part of this appropriation for any other purpose would be an expenditure without an appropriation in violation of Section 72, supra.

Specifically answering your inquiry, I am constrained to hold that the comptroller has no authority to pay over to the University of Alabama for the benefit of the Medical College of Alabama the balance of $22,483.30 of the $25,000.00 appropriated by Section 4, supra, for the payment of the actual expenses of the building commission created under Section 2 of said act.

Very truly yours,

SI GARRETT

Attorney General

June 26, 1951

Hon. J. M. Edwards

Commissioner of Revenue

Department of Revenue

CAPITOL

Motor Vehicles — Licenses — Taxation

After the license tags of nonresident military personnel have expired at a date other than the expiration date in Alabama and after November 15, if such military personnel elect to purchase tags in Alabama, such tags may not be purchased on a monthly declining basis as provided in Title 51, Section 693, Code of Alabama 1940.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion, bearing date of January 16, 1951, is as follows:

"We have a number of cases in the various counties of this state where non-resident military personnel has come into the State of Alabama, from other states, on military assignments, and have brought with them their automobiles. In most of these cases, the automobile license tags on said cars have not expired, and are still good in the state from which these people came, or from the state of their domicile or residence.

"In an opinion rendered by your office to Mrs. Sadie P. Gardner, Tax Assessor, Dallas County, Selma, Alabama, dated November 9, 1948, you held that the Soldiers' and Sailors' Civil Relief Act of 1940, as amend-

ed, applied to such non-resident military personnel bringing their automobiles into this state with them, and where they had purchased license tags for said cars in the state of their domicile or residence. And, under the circumstances, in such cases, the license tag acquired by them in the state of their domicile or residence would be good in Alabama for the current year, and until such license tags expire, and that another tag would not be required until such tags did expire in accordance with the laws of the state wherein same were purchased.

"In the opinion to Mrs. Gardner to which I have referred, you call attention to the fact that the Congress of the United States enacted the Selective Service Act of 1948, Public Law No. 758, 80th Congress. Section 14 of said Act re-enacted the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. Therefore, in considering the question which is presented to you in this letter, it would appear that consideration would have to be given to the provisions of the Soldiers' and Sailors' Civil Relief Act, as amended. Title 50, Section 574, U. S. Code Annotated, reads in part as follows:

"'574. Residence for tax purposes.

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any state, territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval order, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect to the personal property, income, or gross income of any such person by any State, territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, territory, possession, political subdivision, or District, **and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, territory, possession, or political subdivision, or district: Provided.** That nothing contained in this section shall prevent taxation by any State, territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refusing of any tax prior to October 6, 1942.

"'(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property **(including motor vehicles)**, AND (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: **Provided, that the license, fee, or excise required by the State, territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.** Oct. 17, 1940, c. 888, 514, as added Oct. 6, 1942, c. 581, 17, 56 Stat. 777, and amended July 3, 1944, c. 397, 1, 58 Stat. 722.'

"In said opinion you also held that when any such foreign auto tags expire, as provided by the laws of the state where issued, that under said Soldiers' and Sailors' Civil Relief Act, such non-resident military personnel could elect to either buy their new tags in Alabama without penalty or from the state of their domicile or residence, and that in the case of such election, either tag would be good in such cases for use in Alabama.

"Several of our Probate Judges are now confronted with the question, where such non-resident military personnel has elected to purchase their tags in Alabama, where the tags have expired at a different date of expiration than that provided in Alabama, and after November 15th, can such military personnel buy their new license tags on the monthly declining basis as is provided for under Title 51, Section 693, Code of Alabama 1940. We should, therefore, appreciate your giving us your official opinion on this question.

"In considering the question, your special attention is called to the provisions of Title 51, Section 693 and 705, as amended, Code of Alabama 1940.

"In view of the fact that there is now a large influx of new military personnel in this state caused by the present war situation, and as the several Probate Judges of this state are confronted with numerous cases wherein this question is involved, and new cases arise daily, we urgently request that this question receive your immediate attention."

When the extrastate licenses which you have described in your request expire, the military personnel involved may not take advantage of the monthly declining basis feature of Tile 51, Section 693, Code of Alabama 1940.

It is true that nonresident military personnel are not required to pay license fees for operation of their vehicles in Alabama so long as they have valid outstanding licenses from the states of their residence. This is true because of the provisions of the Soldiers and Sailors' Civil Relief Act of 1940, as amended (Title 50, Sec. 574, U. S. C. A.) However, under the provisions of this Act, when the licenses in the respective states of such nonresident military personnel expire, they must elect whether or not to take out new licenses in the states of their residence. If they elect not to take out licenses in the states of their residence, then Alabama licenses are required for operation of the vehicles in Alabama. According to the facts of your request, your question arises where the personnel have elected to take out licenses in Alabama.

The monthly declining basis feature of Section 693, supra, is not available to nonresident military personnel under the facts stated in your inquiry. The personnel are not within the literal wording of that section which provides:

"Provided, however, that for new and used **automobiles acquired subsequent to November fifteenth in any tax year** tag licenses shall be purchased on a monthly declining basis . . . . " (Emphasis added.)

Thus, it is obvious that your facts do not bring the personnel involved within this proviso, for your facts indicate clearly that the automobiles were **acquired** prior to November 15.

Though there has been some confusion in prior opinions of this office on the question which you have raised, the definite opinion is in Quarterly Report of the Attroney General, Vol. 18, page 48, which holds that a person owning a motor vehicle prior to November 15 is not entitled to a license on a monthly declining basis. This opinion was based on an opinion found in Quarterly Report of Attorey General, Vol. 14, page 269, which opinion expressly overruled prior opinions holding to the contrary. The opinion in Vol. 18, supra, was directed to facts which indicated that the motor vehicle in question had not been brought into the State of Alabama nor operated on the highways of Alabama prior to the date on which the application for license was made, i. e., after November 15. This situation is more extreme than the one here under consideration.

In summary, the automobiles about which you inquire were not acquired subsequent to November 15; therefore, the proviso of Section 693, supra, does not apply. Thus, the personnel involved may not take advantage of the monthly declining basis feature of that section.

Respectfully submitted,

SI GARRETT

Attorney General

June 26, 1951

Hon. Charles C. McWhorter, Chairman

Board of Revenue

Lawrence County

Moulton, Alabama

Counties — Funds — Gasoline and Gasoline Tax — Roads and Bridge — Lawrence County.

1. A county governing body may transfer money from the Road and Bridge Fund or Gasoline Fund for reimbursement of the General Fund for expenditures made from the General Fund which properly should have been made from the former funds.

2. Proceeds of the sale of State gasoline tax anticipation warrants may be used for such purposes as the county governing body may determine in connection with the road and bridge program of the county.

3. A county governing body may amend its minutes and resolutions relating to the use of proceeds of the sale of State gasoline tax anticipation warrants, provided such amendments do not affect or disturb the vested rights of the purchasers of such warrants.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of June 21, 1951, is as follows:

"On June 1, 1951, pursuant to provisions of Act. No. 18, General Acts 1951, Regular Session, I assumed office as Chairman of the Board of Revenue of Lawrence County, Alabama. In connection with the performance of my duties as such I request your official opinion as to the following matter:

"As a result of an audit and examination of the fiscal affairs of the county governing body of Lawrence County for the period October 1, 1947 - June 30, 1950, it was disclosed that certain expenditures in the amount of $28,860.10 had been made from the General Fund of the County for the purchase of road equipment or machinery. As I understand the law in this regard, and as reflected by the report of examination, these expenditures should have been made from the Gasoline Fund or the Road and Bridge Fund of the County. It appears that these purchases were made during the year 1948. It further appears that the money so expended was never transferred from the General Fund to either the Road and Bridge Fund or the Gasoline Fund but rather that such expenditures were made directly from the General Fund of the County. It likewise appears that at the time of such expenditures there was no surplus existing in the General Fund which might have been transferred to either the Road and Bridge Fund or the Gasoline Fund.

"The General Fund of the County is now depleated of sufficient money for county operations and I wish to inquire of you as to whether or not the Board of Revenue may lawfully reimburse the General Fund of the County in the above stated amount from any or all of the following sources, namely, the Road and Bridge Fund of the County, the Gasoline Fund of the County, or the residue remaining on hand as a a result of the sale in 1949 of $300,000.00 in State gasoline tax anticipation warrants. There is at present remaining on hand approximately $108,000.00 of the proceeds of the sale of these warrants. With reference to this latter amount I should call to your attention the fact that the resolution of the county governing body with reference to the sale of such warrants stated that the proceeds received by the county from the sale thereof should be kept separate and apart from all other moneys of the county and the proceeds received from such sale was to be used solely for the purpose of constructing or improving or aiding in the constructing and improving of necessary public roads and bridges in the county. If it should be that you were to determine that under this provision the above $108,000.00, or a portion thereof, could not be used for the purpose of reimbursing the General Fund for the purchases irregularly made therefrom I would like to be advised as to whether the county governing body might now amend such resolution so as to permit the proceeds mentioned to be used to reimburse the General Fund in this amount."

In response to your inquiry, I advise you that, in my opinion, if there are sufficient funds now on hand in either the Gasoline Fund or the Road and Bridge Fund of the county to reimburse the General Fund in the amount of $28,860.10, as mentioned by you in your request, such transfer may lawfully be made.

You are correct in your construction of the law that such expenditures, when originally made, should have come from either the Gasoline Fund or the Road and Bridge Fund of the county rather than the General Fund. Biennial Report of Attorney General, 1936-38, page 472. I should likewise

point out that under certain conditions a county governing body may authorize a transfer from the General Fund of the county to the Road and Bridge Fund money needed for the operation of the road and bridge program of the county. Statutory authority is to be found within Title 23, Section 47, Code of Alabama 1940. This office has likewise ruled on numerous occasions that such transfers may be made. However, such transfers may only be made when there is sufficient money remaining in the General Fund, after the transfer, to pay all obligations against the General Fund at the time of the transfer. The surplus so transferred may only be used for road and bridge purposes. Whether or not there is such a surplus in the General Fund is a question of fact to be determined by correct accounting procedures. See in this connection Quarterly Report of Attorney General, Volume 54, page 105, with the citations of authority found therein.

Inasmuch as you advise that the amount here in question was never actually transferred from the General Fund to either the Road and Bridge Fund or the Gasoline Fund of the county, the question of the legality of such a transfer does not arise. However, the above is pointed out to evidence the fact that, in view of the statements in your request, such transfer could not have been lawfully made at the time, for the reason that no surplus existed in the General Fund.

It would, therefore, appear that the procedure followed by your county governing body constituted nothing more than an attempt or effort to borrow money from the General Fund to purchase such road machinery and supplies, perhaps with the intent of later repaying the General Fund from the Road and Bridge Fund money or Gasoline Fund money. Such a procedure has been condemned by this office in an opinion reported in Quarterly Report of Attorney General, Volume 9, page 112. See also Quarterly Report of Attorney General, Volume 20, page 85.

In view of the fact stated in your request, it appears that the General Fund of the county has been depleted in the amount of $28,860.10, and that such amount is now due the General Fund from either the Road and Bridge Fund of the county or the Gasoline Fund; and I am of the further opinion that if there is sufficient money on hand in either of these funds to so reimburse the General Fund in this amount, such transfer may be made by your county governing body. To do so would accomplish nothing more than to place the various funds of your county in proper balance, thereby facilitating an efficient and proper administration of the various programs operating from county funds. Cf. Quarterly Report of Attorney General Volume 7, page 49, and Biennial Report of Attorney General 1930-32, page 447.

Regarding your inquiry concerning the reimbursement of the General Fund of the county from the proceeds of the sale of gasoline tax warrants and will not have, from its income which will accrue prior to the end of the governing body, which I have at this time before me, that under date of May 27, 1949 the county governing body adopted a resolution authorizing the sale of the above mentioned State gasoline tax anticipation warrants in the amount of $300,000.00. In this resolution it is stated that the proceeds of such sale are to be used in the construction and improvement, or to aid in the construction and improvement, of necessary public roads and bridges in the county; and that such sale is necessitated by the reason that the county does not have, of 1949. I must advise as follows: It appears from the resolution of the county fiscal year 1949-50 funds sufficient and available for the purposes stated. It is further provided within paragraph 12 of such resolution that:

> "(12) The warrants shall be sold and the proceeds received by the county from the sale thereof shall be kept separate and apart from all other moneys of the county and the proceeds received from the sale

thereof shall be used solely for the purposes set out in parapraph (a) of the preambles hereto."

As I have indicated, these purposes were to construct and improve, or aid in the construction and improvement, of necessary public roads and bridges in the county.

Construing the above rosolution, I arrive at the conclusion that the county governing body at the time of the adoption of same did not contemplate that any portion of the revenue derived from the sale of such warrants was to be used for the purpose of satisfying previously incurred obligations of the Road and Bridge Fund or Gasoline Fund of the county. It further appears that the county governing body resolved that the proceeds received from such sale were to be used solely for contemplated or prospective road construction or road improvement within the county. I am, therefore, of the opinion that, as the resolution of the governing body now appears in the official minutes, it would not be proper or lawful to transfer any portion of the funds remaining from the sale of such gasoline tax anticipation warrants into the General Fund of the county in satisfaction of the obligation now existing on the part of the Road and Bridge Fund or Gasoline Fund to the General Fund.

However, in answer to your further inquiry, regarding the authority of the county governing body to now amend this resolution as to the use of the proceeds from the sale of such State gasoline tax anticipation warrant, I advise you that I find no legal objection thereto. Certainly no amendment may be made to such resolution which would in any way affect or disturb the vested rights of the purchasers of such gasoline tax anticipation warrants; but, in my opinion, an amendment such as that suggested by you would not do so. In my judgement, the use of the proceeds of such sale is a matter addressing itself to the sound discretion of the county governing body, conditioned of course on the fact that such proceeds must be used in connection with the construction or improvement of the public roads and bridges of the county and the satisfaction of obligations incurred pursuant thereto. It is my judgment that should such resolution be amended so as to authorize the county governing body to expend the proceeds of such sale in payment of any legitimate obligations payable from the Road and Bridge Fund or Gasoline Fund of the county, heretofore, or hereafter created, then it would be permissible for the county governing body to transfer from the funds now remaining of the proceeds of such sale an amount sufficient to reimburse the General Fund of the county for the obligation now due it by the Road and Bridge Fund or Gasoline Fund of the county.

Yours very truly,

SI GARRETT,

Attorney General.

June 26, 1951

Hon. Ed E. Reid, Executive Director

The Alabama League of Municipalities

Fourteen South Hull Street

Montgomery, Alabama

Municipalities.

In towns of less than 6000 population, the mayor is a member of the legislative council, and as such he may vote or not at his discretion; but in the event he should vote and the result is a tie, he is entitled to a second vote, which he must cast.

Opinion by Assistant Attorney General Parker.

Dear Sir:

Your request for an official opinion, addressed to my predecessor, is as follows:

"Section 404, Title 37, Code of 1940 provides in part as follows:

"' . . . The mayor shall preside over all deliberations of the council. At his discretion he may vote as a member of the council on any question coming to a vote, except in case of a tie, in which event he must vote. . .'

"It was recently called to my attention by the mayor of one of our cities that he construed this provision of the Code to mean that the mayor could vote with the council on a question before it and if the vote resulted in a tie that he (the mayor) could again vote, thus untieing the vote on the proposition. I do not understand the law to mean that but in checking around I find that in a great number of cities this practice of the mayor voting twice on a proposition is being followed. In cities of less than 6,000 population there are five members of the council and when the mayor exercises his prerogative to vote there are six votes registered, if all members are present and voting. It may very easily be possible that there would be a lot of tie votes where six men are voting on a proposition before the council.

"I wish you would advise me whether, in your judgment, Section 404 could be construed to mean that a mayor may exercise a voting privilege with the council in its deliberations and where the vote results in a tie that he may again vote, thus untieing the count on the proposition.

"Scmetime earlier this year in an opinion addressed to Hon. A. P. Wilson, Clerk of the Town of Hodges in Franklin County, you ruled on the effect of a part of Section 404, Title 37, Code of 1940 but you did not extend your ruling to cover the question that I have herein raised."

In reviewing the history of that part of Title 37, Section 404, Code of Alabama 1940, quoted by you, I find that the Code of Alabama 1907, Section 1068, contained the following wording:

". . . the mayor shall sit with and preside over the deliberations of the council and cast a deciding vote in case of a tie; . . ."

In interpreting this provision of Section 1068, supra, the Supreme Court of Alabama clearly indicated that if the presiding officer is a member of the legislative council, he is entitled to vote. **Michael v. State, ex rel. Welch, et al.,** 163 Ala. 425, 50 So. 929. In this case the Court said:

"The councilman appointed to preside at the meeting of the council, being a member of the body and entitled to vote, was not, as an incident of such appointment to preside, stripped of the right to vote upon the passage of the ordinance. McQuillan on Mun. Ord. § 102."

Under Section 1760, Code of Alabama 1923, the mayor did not have the right to cast a deciding vote in case of a tie. Section 1760 read, in pertinent part, as follows:

"The mayor shall vote with and preside over the deliberations of the council."

In the 1940 Code, Section 404, supra, the wording was again changed to read as set forth in your request. This section was construed in an opinion of this office found in Quarterly Report of Attorney General, Vol. 58, page 101. In this opinion it was held that the mayor in towns of less than six thousand population is a member of the legislative council; and as such, he may vote or not vote at his discretion, except in the case of a tie, in which event he must vote.

If the mayor should choose to vote as a member of the council and a tie results, may he then break that tie by casting a second vote? My answer is in the affirmative.

In **People v. Teller,** 7 N. Y. S. 2d. 168, the New York Supreme Court construed a statute which is very similar to the provision of Section 404, here under consideration, and which reads, in pertinent part, as follows:

" 'The mayor of the village shall preside at the meetings of the board of trustees, and may have a vote upon all matters and questions coming before the board **and** he shall vote in case of a tie.' "

In interpreting this provision, the court held that the mayor is entitled to vote as a member of the board; and, in case of a tie, the mayor is entitled to a second vote. In this case the court said:

". . . In other words, it gives him a permissive vote which he may exercise as a member of the Board, and a compulsory vote in case of a tie as a presiding officer. . . . ."

". . . In 2 McQuillin on Municipal Corporations, 2d Ed., Sec. 620, the author states: 'Where the presiding officer or mayor is a member of the council or governing body, unless expressly forbidden by law, it is generally held that he may not only vote on all questions as a constituent member, but where the charter gives him a casting vote in event of a tie he may vote the second time.' To the same effect is 2 Dillon on Municipal Corporations (5th Ed.) Sec. 511 . . ."

See also **People ex rel. Remington v Rector and Wardens of the Church of the Atonement,** 48 Barb. 603; **Whitney v. Hudson,** 69 Mich. 189, 37 N. W. 184; **Reeder v. Trotter,** 142 Tenn. 37, 215 S. W. 400; **Markham v. Simpson,** 175 N. C. 135, 95 S. E. 106, 62 C. J. S. Municipal Corporations, Section 405.

Yours very truly,

SI GARRETT

Attorney General

June 27, 1951

Hon. John B. Sockwell

Judge of Probate

Colbert County

Tuscumbia, Alabama

Department of Conservation—Game and Fish.

Raccoons and o'possums, when hunted at night, must be hunted with a light only, and the use of any type firearms in their taking at night would be a violation of Title 8, Section 86, Code of Alabama 1940, as amended by General and Local Acts 1949, page 1026.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your request for an official opinion, bearing date of March 22, 1951, is as follows:

"As Probate Judge of this county, I have recently had many inquiries relative to the interpretation of Section 86 of Title 8, of the 1949 Supplement of the 1940 Code, or 1949 General Acts, page 1026.

"In my capacity of selling hunting licenses, numerous coon hunters have stated to me that the interpretation of said Section is extremely important to them in making a decision whether or not to purchase hunting license. As you perhaps know, there are a large number of coon hunters in Colbert County. In fact, the headquarters for the Tennessee Valley Coon Hunters Association is located here.

"I wish to quote to you the said Section 86, which is as follows:

" 'Any person who shall take, catch or kill or attempt to take, catch or kill any bird or animal protected by the laws of this state with or without a headlight or other artificial light or with or without a shotgun, rifle, air rifle, pistol, or revolver between sunset and daylight the following day shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars

for each offense, the amount of such fine to be fixed, determined, and imposed by the Judge of the court presiding at the trial of any case brought under the provisions of this section, and at the discretion of the court may also be imprisoned in the county jail for not longer than six months; provided that animals classed as fur-bearers by the laws of this state or regulations based thereunder may be hunted, pursued, taken, captured, or killed between sunset and daylight the following day, but in no case shall such fur-bearing animals be hunted, taken, caught, captured, or killed by means of or with any shotgun, rifle, air rifle, pistol, or revolver between sunset and daylight the following day, and any violation of the provisions of this section relating to fur-bearing animals shall subject the person so violating to the penalty provided in this section. **Provided, however, that nothing herein contained shall prevent the hunting of animals commonly referred to as raccoons and o'possums with a light at nighttime.'**

"Now, the particular question that has arisen is whether or not it is legal under the law to hunt raccoons and o'possums at the nighttime with a gun, rifle, etc. The last sentence of the said Section, which is underlined above states that nothing therein shall prevent the hunting of such animals with a light at nighttime. As you undoubtedly are familiar with coon hunting, you know it would be an impossibility to hunt them unless you did at night and unless you had some type of fire arms with which to **kill them. The game wardens in this area are interpreting this Section as** meaning that you cannot hunt these animals with fire arms at nighttime, and that you can hunt them only with a light.

"I would appreciate it very much if you would give me a ruling on the interpretation of this Section in order that I can answer the questions of those parties who are only interested in purchasing a hunting license for the hunting of raccoons and o'possums."

Since you have quoted in your inquiry Title 8, Section 86, Code of Alabama 1940, as amended by General and Local Acts 1949, page 1026, it is not necessary that such statute be again quoted in my reply.

When the intent of a statute is in doubt, it should be interpreted in the sense in which it best harmonizes with the object the Legislature had in view. It would appear that the object of the Legislature, in providing in the last sentence of Section 86, as amended, supra, that nothing contained in said section "shall prevent the hunting of animals commonly referred to as raccoons and o'possums with a light at nighttime," was to recognize the time-honored custom of hunting said animals at night with a light only by treeing them. The Legislature further emphasized its intent by setting out in a clear and precise manner that no birds or animals protected by laws of this State may be hunted in any manner at night.

After stating in said Act that protected animals may not be taken at night with or without firearms or with or without lights, an express exception is made of fur-bearing animals, which may be taken at night, but without the use of firearms or lights. The Legislature made a second exception in said Act, applicable only to raccoons and o'possums, which provides that these animals, even though fur-bearing, may be hunted at night with a light.

If a construction was given to said Act which would allow the hunting of raccoons and o'possums at night with firearms, as well as lights, it would be contrary to the legislative intent, which was to restrict hunting with firearms during the nighttime.

I am of the opinion, therefore, that raccoons and o'possums, when hunted at night, must be hunted with a light only, and the use of any type firearms in their taking at night would be a violation of Section 86, as amended, supra.

Yours very truly,

SI GARRETT,

Attorney General.

June 27, 1951

Hon. Lee Bains

City Attorney, Jefferson County

Bessemer, Alabama

Attorneys—Licenses—Municipalities.

The licensing code of a municipal corporation may restrict to the first year of practice the exemption from license fees for attorneys, even though an attorney is not required to pay a state license fee pursuant to Title 51, Section 460, Code of Alabama 1940, until the first day of October following the expiration of two years from that attorney's admission to the bar.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of February 3, 1951, is as follows:

"The license code of the City of Bessemer, Alabama, provides for a license for attorneys and specifies that the first year's practice is exempt.

"Section 460 of Title 51 of the Code of Alabama provides, 'but no lawyer shall be required to pay a license until the first day of October following the expiration of two years from his admission to the bar.'

"It is requested that you advise as to your opinion as to whether or not the quoted part of Section 460 of Title 51 of the Code of Alabama is binding upon municipal corporations of the State of Alabama and whether any license as that enacted by the City of Bessemer can be legally levied.

"Your opinion on this matter is requested for a more objective view of the conflict presented by members of the Bar."

Your request indicates that the City of Bessemer provides for the licensing of attorneys to practice in that city, and exempts only the first year's prac-

tice of attorneys from the provisions of that licensing code. The city of Bessemer is not required to grant an exemption from attorneys' licenses equivalent to the exemption provisions in Title 51, Section 460, Code of Alabama 1940.

The provisions of Section 460, supra, exempt lawers from license fees until the first day of October following the expiration of two years from their admissions to the bar. This exemption, however, applies only to the state and counties, by the express provision of that section. Moreover, it is significant that the language of Section 460, excludes imposition of license fees by counties, and in contrast, does not mention the imposition of license fees by municipal corporations. We must assume that the Legislature knew that municipal corporations had the power to impose license fees on attorneys and actually had done so in many instances. The absence of a prohibition against municipal licenses for any period of time at all is, therefore, significant.

Municipal corporations have independent powers to license by virtue of Title 37, Section 733, as amended by Act No. 502, General Acts 1943, page 477, and Section 735, Code of Alabama 1940. Thus, municipal corporations may impose a license fee as a prerequisite for practicing law therein. Municipal corporations are not bound to follow exemptions set forth in similar license statutes to State law, in the absence of an express legislative direction so to do.

Yours very truly,

SI GARRETT,

Attorney General.

June 27, 1951

Hon. Perry B. Hughes, Jr.

Clerk, Circuit Court

Tuscaloosa County

Tuscaloosa, Alabama

Clerks of Circuit Courts—Costs and Fees—Executions.

A clerk of a circuit court on a salary basis has the duty to issue execution promptly against a successful plaintiff in the amount of the cost actually created by said plaintiff, upon the return of an execution against the defendant "No property found," and should not wait ten years to issue said execution. Title 11, Section 7, Code of Alabama 1940.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of May 3, 1951, is as follows:

"State Examiners now engaged in an audit of the records and accounts of my office have directed me to issue executions against the Plaintiff under Title 11, Section 7 of the Code of 1940, as all of the cost in these cases go to Tuscaloosa County General Fund.

"I would appreciate you advising me in the following instance.

"After judgement has been rendered in a case and ten days have lapsed and execution has been issued against the defendant and returned by the Sheriff, "NO PROPERTY FOUND" how long can I wait before issuing an execution against the Plaintiff for cost incurred in obtaining the judgement. It is my opinion that I can wait up to ten (10) years. See Attorney General's Report 1922-24, Page 302."

In my opinion, you should promptly issue execution against the plaintiff after execution has been issued against the defendant and returned "No property found."

Title 11, Section 7, Code of Alabama 1940, provides for a method whereby the officers of the court may collect fees and costs from a successful plaintiff after the unsuccessful defendant has been found to possess no property upon which execution can be levied.

As stated in your inquiry, the costs in such cases, in Tuscaloosa County, are not retained by the officer but are required to be paid to Tuscaloosa County.

When Title 11, Section 7, Code of Alabama 1940, was enacted, there were probably few if any officers of the court on a salary basis. Those officers on a fee basis could be expected to be prompt in issuing execution against the plaintiff for the costs created at the instance of the plaintiff, because those officers would receive the fees. There was no necessity, therefore, for Title 11, Section 7, Code of Alabama 1940, to be mandatory in its provision, which states that the clerk "**may** issue execution against the plaintiff, or against the plaintiff and sureties,.....for the costs actually created by the plaintiff....." (Emphasis supplied.)

In my opinion, however, when an officer no longer receives fees, and the county is entitled to the fees that the officer would have formerly collected as his own, the officer, or clerk, is charged with the duty of attempting to collect the costs created at the instance of the plaintiff with as much dilligence as he would if he were to receive the costs himself. It is my opinion, therefore, that it is the duty of a clerk on a salary basis "upon the return of an execution 'no property' against the defendant," to issue an execution against the plaintiff for the costs actually created by the plaintiff.

The opinion referred to in your inquiry, Biennial Report of Attorney General, 1922-24, page 302, does not hold that the clerk may wait up to ten years to issue execution against the plaintiff. That opinion does indicate that such an execution against the plaintiff may be issued at any time during the ten-year period. Although the clerk has power to issue execution against the plaintiff for a period of ten years, it is his duty to do so promptly upon a return of an execution against the defendant "No property found." If it becomes necessary for the clerk to issue another execution against the plaintiff during the ten-year period, he may, of course, do so.

Yours very truly,
SI GARRETT,
Attorney General.

June 27, 1951

Hon. J. M. McCullough, Director

Department of Corrections and Institutions

CAPITOL

Department of Corrections and Institutions—Convicts—Records.

The installation of machine records, containing the requisite information and data required by Title 45, Sections 17 and 30, Code of Alabama 1940, which records will be printed on loose leaf forms, bound and locked in permanent volumes, will be a sufficient compliance with the provisions of said sections relative to book and permanent record entries.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion, bearing date of May 8, 1951, is as follows:

"As Director of this Department, I am contemplating the instigation of all statistical records pertaining to convicts on the I. B. M. Punch Card System. Before undertaking the complete changes necessary, I would like an opinion as to the compliance with Title 45, Sections 17 and 30 of the Alabama Code of 1940 with reference to the type of records to be kept by this department. The I. B. M. records mentioned above will be printed on loose leaf forms and will be bound and locked in permanent ledgers.

"It is my opinion that this will comply with the provisions of said Title 45 and your official opinion is requested at your earliest convenience so that we may proceed with this undertaking."

In answer to your inquiry, it is my opinion that the installation of the I. B. M. records in question, containing requisite information and data required by Title 45, Sections 17 and 30, Code of Alabama 1940, which records will be printed on loose leaf forms, bound and locked in permanent ledgers, will be a sufficient compliance with the provisions of said section.

Title 45, Section 17, supra, provides as follows:

"§17. Record of convicts and accounts to be kept.—In the office of the department shall be kept **a book, or books,** in which shall be kept a record of all state and county convicts, showing the date of conviction, crime, sentence, county, and court in which convicted, and such other information as the director may prescribe. There shall also be kept such **other books** as the director may deem proper." (Emphasis supplied.)

Title 45, Section 30, supra, provides as follows:

"§30. Record of convict's history and description made.—It is the duty of the department, upon the reception of any convict into the penitentiary, to take his height, name, age complexion, color of his hair and

eyes, finger prints, photograph, the place of his nativity, the county in which he was convicted, the nature of the crime and the period of imprisonment; all of which, together with the statement of the time when such convict was received, must be entered upon **a permanent record.** The baggage and person of every convict must be carefully searched, and every instrument taken therefrom by which he may effect his escape." (Emphasis supplied.)

It is assumed that the I. B. M. records, referred to in your letter of inquiry, will contain all of the information and data required by these sections. The questions then presented are whether the printed loose leaf forms, which will be bound and locked in permanent ledgers, would constitute **a book or books** within the purview of Section 17, supra, and/or **a permanent record** within the purview of Section 30, supra. Both of these queries should be answered in the affirmative.

A "book" in its proper sense is understood to be a volume, bound or unbound, written or printed. 5 Words and Phrases, Per. Ed., page 677. The term "book or books," as used in Section 30, supra, in my opinion, includes a loose leaf book or loose leaf books. Opinion of Attorney General to Administrative Assistant, State Board of Pardons and Paroles, dated April 20, 1951 (Ms.); Cf. **Alston v. State,** 248 Ala. 163, 26 So. 2d. 877.

The proviso "entered upon a permanent record," as used in Section 30, supra, does not require the entry to be first made in a bound volume. Moreover, the printed loose leaf forms will be bound and locked in permanent ledgers. In my judgement, this method will be a sufficient compliance with this section in respect to entry upon a permanent record.

Yours very truly,

SI GARRETT

Attorney General

June 27, 1951

Hon. Isaac Johnson, Jr.

Judge of Probate

Lawrence County

Moulton, Alabama

Counties—Funds.

The county has authority to purchase Red Cross First Aid Books for distribution to the public under the provisions of Section 9 of Act No. 14, Special Session 1951 approved January 30, 1951.

Opinion by Assistant Attorney General Galloway.

Dear Sir:

Your request for an official opinion, bearing date of May 4, 1951, is as follows:

"I would appreciate your opinion as to the authority of Lawrence County purchasing and paying for Red Cross First Aid Books to be distributed to the public, as provided for in the special session of the Legislature, 1951, Act 14, House Bill 5, by Russell, Dumas, Merrill, Harrison and others, known as the "Alabama Civil Defense Act of 1951."

"I call your attention to Section 9 to be considered along with the entire Act.

"Would the County have the authority to purchase and pay for the above mentioned books? If so, is it mandatory? If it is authorized and mandatory could the County pay for these books out of the general fund when there is no surplus and, no doubt, not enough money to pay the mandatory expenses for the rest of the year."

It is my opinion that your first inquiry should be answered in the affirmative.

The pertinent part of Section 9 of Act No. 14, Special Session 1951, approved January 30, 1951 known as the "Alabama Civil Defense Act of 1951", is as follows:

"Section 9. * * *

"(b) Each political subdivision shall have the power and authority:

"(1) 'To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil defense purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any disaster resulting from enemy attack; and to direct and coordinate the development of civil defense plans and programs in accordance with the policies and plans set by the Federal and State civil defense agencies."

This section of the act does not specifically provide for the expenditure of county funds for Red Cross First Aid Books; but in light of Section 19 of Act No. 14, supra, which provides for a liberal construction of the act, I am of the opinion that the county has authority to purchase Red Cross First Aid Books for distribution to the public of the county. I am further of the opinion, however, that this act does not authorize the indiscriminate distribution of these books to the public; but their distribution under the orderly supervision of the local organization for civil defense, authorized to be established by said Act.

There is no provision in Act No. 14, supra, making it mandatory that the county purchase these books; therefore, your second inquiry should be answered in the negative.

In view of the answers to your first and second inquiries, it is not necessary to answer your third inquiry.

Very truly yours,

SI GARRETT,
Attorney General.

June 27, 1951

Hon. G. C. Brittain

Judge of Probate

Calhoun County

Anniston, Alabama

Adoption—Infants—Public Welfare, Department of.

1. A boy of 19 years of age, even though he is married, may not petition for the adoption of a minor child.

2. Where a petition has been filed for the adoption of an adult person, it is not necessary that investigation and recommendation be made by the State Department of Public Welfare.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of February 26, 1951, is as follows:

"I desire an official opinion from you clarifying the law governing adoptions.

"1. There has been filed in the Probate Court a petiiton by a boy 19 years of age, who is married, to adopt a minor child. Would the petitioner in this case have to be 21 years of age to qualify under the law as an adult person, or would the fact that this person is married make him eligible to file a petition for adoption of a child?

"2. Petition has also been filed for the adoption of an adult person and consent of said adult filed with petition. Will it be necessary for the court to follow the proceedings outlined for the adoption of a minor, or should the court make Final Decree of Adoption, without the investigation or recommendation of the Department of Public Welfare?"

1. The fact that a boy 19 years of age has married does not enable him to petition for the adoption of a minor child. The statute provides that a "proper adult person . . . may petition the probate court . . . . for leave to adopt a child . . . ." Title 27, Section 1, Code of Alabama 1940. The word "adult" clearly means a person who has reached the age of 21. The word has a well defined connotation in the law: See: 2 Words and Phrases, Adults, page 488. Marriage does not make a minor boy an adult.

2. Investigation by the State Department of Public Welfare is required under the terms of Title 27, Section 2, Code of Alabama 1940, "Upon the filing of a petition for the adoption of a **minor child** . . . ." (Emphasis supplied.) Thus, where the petition has been filed for the adoption of an adult person, an investigation and recommendation from the State Department of Public Welfare are not necessary. (Adult children may be adopted. See: **Sheffield v. Franklin,** 151 Ala. 492, 44 So. 373.)

Very truly yours,
SI GARRETT
Attorney General

June 27, 1951

Hon. T. R. Ward

Judge of Probate

Henry County

Abbeville, Alabama

Ad Valorem Taxes — Exemptions — Taxation

1. Industrial plant or factory is not entitled to exemption from state, county, or city ad valorem taxation as to any property, or addition thereto, in existence prior to the date of application for such exemption under the provisions of Title 51, Sections 4 and 7, Code of Alabama 1940.

2. A partnership operating a veneer mill which operates lathes cutting veneer is entitled to an exemption from ad valorem taxation as a factory manufacturing light wood or metal products.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion bearing date of February 3, 1951 is as follows:

"We have in this County a Veneer Mill which operates lathes cutting veneer. During the past year this concern which is a partnership, installed a veneer drier and other additions at a cost of some $50,000.00. Before these additions were made they discussed with me the possibility of tax exemption on this addition. The Commissoners Court went on record favoring such tax exemption in the event it could be legally granted. However, no application was filed by this concern for such exemption and no further action taken by the Commissioners Court.

"This concern is now contemplating the addition of a box plant and other additions to utilize the veneer produced by them. These additions will cost, if made, somewhere between $100,000.00 and $150,000.00. The parties owning this concern are local people who started on the proverbial 'shoe string' and need all the assistance they can get financially.

"Because of the increase in revenue and payroll this business is bringing to the County the County is desirous of granting them exemption from ad valorem taxes for a period of years.

Will you please advise me as to whether under Secs. 3 and 6 of Title 51 as amended by the 1949 Legislature the City of Abbeville, Henry County, and the State of Alabama, can grant the tax exemption provided for in said Sections as follows:

"1. On the additions already made during the past year as set out in the first paragraph.

"2. On the contemplated additions set out in the second paragraph.

"3. To this concern as a partnership. (The above mentioned sections refer to incorporation, etc.)

"Your early attention to this will be appreciated as the building of the additional facilities is hinging on this and certain other contingencies."

1. Your question 1 must be answered negatively. The exemptions from ad valorem taxation set out in Title 51, Sections 1, 3 and 6, Code of Alabama 1940, as amended by Act No. 639, General Acts 1947, page 491, Act. No. 92, General and Local Acts 1949, page 117, and Act No. 93, General Local Acts 1949, page 118, respectively, are not self-executing. It is necessary to file an application for exemption. Quarterly Report of Attorney General, Vol. 56, page 8; Vol. 24, page 93; Vol. 28, page 119; Vol. 43, page 51.

2. As to the proposed additions referred to in your second inquiry, if application is made before construction of the additions has begun, or before the tax lien has attached, the company concerned would be entitled to the exemption. Both Sections 3 and 6, as amended, supra, grant an exemption to "factories manufacturing light wood or metal products . . ." It would appear that the company involved in your request is engaged in the manufacture of light wood products.

3. The exemptions are not restricted to corporations. Sections 4 and 7 of Title 51, Code of Alabama 1940, use the phraseology "person, firm, or corporation . . . . "

Very truly yours,

SI GARRETT

Attorney General

June 27, 1951

Hon. J. Sydney Cook, Jr.

County Solicitor

Lee County

Auburn, Alabama

Gaming and Lotteries — Condemnation — Slot Machines — Searches and Seizures.

Coin operated gambling devices, commonly known as "slot machines," are contraband and as such are subject to seizure, forfeiture, condemnation and destruction whenever and wherever found, even though they are possessed, maintained, or operated within the confines of a private social corporation or so-called "country club."

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion bearing date of May 14, 1951, is as follows:

"The undersigned County Solicitor for the County of Lee, State of Alabama, requests you to answer the following question:

"May the Opelika Country Club, Opelika, Alabama, and the Sougahatchee Country Club, Auburn, Alabama, social corporations organized under the laws of Alabama, and being stock companies, legally possess, maintain, and operate the coin operated gambling devices known as slot machines?

"Since taking office as County Solicitor of Lee County, the undersigned has been faced with forces on all sides who insist that these machines be removed. It is his understanding that these private clubs can legally possess, maintain, and operate these machines."

In my opinion, your question must be answered in the negative.

To suppress the evils of gambling devices, the Legislature of Alabama passed Act No. 671, General Acts 1931, page 806, codified as Title 14, Sections 283-292, Code of Alabama 1940, which act defines the term "gambling device"; makes it unlawful for any person, firm, corporation or association of persons, within this state, to possess, keep, own, set up, operate, or conduct, or permit to be set up, operated, or conducted, any "gambling device" as therein defined, **at any place whatsoever;** and provides for their seizure, forfeiture, condemnation and destruction.

Section 283, supra, defines the term "gambling device" as including any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, (a) "in the use of which a consideration is paid or deposited, and there is gambling or the hazarding of small amounts of money or property to win larger amounts of money or property"; or (b) "which determines the result of winning or losing money or property by chance, lot or luck, in which neither the will nor skill of man can operate to influence the result of winning or losing"; or (c) "for the division of or distribution of either money or articles of personal property, where said distribution or division is to be determined by lot or chance amongst those who take shares or are interested in the scheme"; or (d) "which is operated or can be operated as a game of chance"; or (e) "where money or property is hazarded on chance, or risked on an uncertain event"; or (f) "into which money is placed or deposited upon chance or upon the result of the action of such machine, mechanical device, contrivance, appliance or invention"; or (h) "intended for the purpose of winning money or any other thing by chance or hazard."

In construing Act No. 671, supra, the Supreme Court has held that so-called "slot machines" are illegal gambling devices within the meaning of the definitions thereof as enumerated in the act and Section 283, supra, **Hurvich v. State,** 230 Ala. 578, 162 So. 362; **Roberts v. State ex rel Cooper, Solicitor,** 253 Ala. 565, 46 So. 2d 5.

Sections 286, 287, and 291, supra, provide for the seizure, forfeiture, condemnation and destruction of illegal gambling devices, as defined by Section 283, Supra. Such devices are, therefore, contraband, They cannot be put to any legitimate use, and since the law will not recognize them as property,

they may be destroyed after lawful seizure and condemnation thereof. **Roberts v. State ex rel. Cooper, Solicitor,** supra; **Agnesia v. State,** (Ala. App.) 45 So. 2d 712.

Section 284, supra, provides that it is unlawful to possess, keep, own, etc., any "gambling device," as defined in Section 283, supra, **"at any place whatsoever."** (Emphasis supplied.) Since such devices are contraband, their bare possession is unlawful, proof of their actual use for gambling purposes not being a prerequisite to their seizure and destruction. **Hurvich v. State,** supra, **Agnesia v. State,** supra.

I am of the opinion, therefore, that coin operated "slot machines," as that term is commonly known and used, are illegal gambling devices and, as such are subject to seizure, forfeiture, condemnation and destruction whenever and wherever found, and that a private social corporation or so-called "country club" cannot legally possess, maintain, or operate them. See **Coleman County Country Club, Inc. v. State,** (Tex. Civ. App.) 236 S. W. 2d 558.

Very truly yours,

SI GARRETT

Attorney General

June 27, 1951

Hon. Hoyt B. Hamilton

Tax Assessor

St. Clair County

Ashville, Alabama

St. Clair County — Taxation — Schools — Constitutional Amendments.

The special school tax in St. Clair County levied by Amendment No. LXXVII to the Constitution of Alabama 1901, proposed by Act No. 322, General and Local Acts 1949, page 467, should be collected beginning October 1, 1951, based on assessments made for the tax year 1951, which, as required by law, were made during the assessing period beginning October 1, 1950.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of May 23, 1951, is as follows:

"In Re: Act No. 322 House Bill 887 Inzer

"Under Section One of the above cited Act provisions are made for the following 'In addition to all taxes now or hereafter authorized by the Constitution and Laws of Ala., there is hereby levied and shall be collected a special school tax of fifty cents on each one hundred Dollars worth of taxable property in St. Clair County.'

"I am enclosing copy of notice of Special County school tax election by order of the court of County Commissioners of St. Clair County, Ala. The election was held on May 15, 1951.

"Official count being made May 22, 1951. The results being 475 votes for the proposed taxation with 214 votes against proposed taxation.

"Please give me an official opinion on the following question as soon as possible.

"Inasmuch as it is my responsibility as Tax Assessor to compute the taxes on the 1951 assessment, which will be collected beginning Oct. 1, 1951, does this bill require me to compute taxes on the additional 5 mills on 1951 assessments which were signed by the tax payers from Oct. 1, 1950 to Dec. 31, 1950.

"I am enclosing also copy of official ballot."

Amendment No. LXXVII to the Constitution of Alabama 1901, proposed by Act No. 322, General and Local Acts 1949, page 467, submitted on December 13, 1949, and proclaimed ratified on December 21, 1949, provides in pertinent part as follows:

"In addition to all taxes now or hereafter authorized by the Constitution and laws of Alabama, there is hereby levied and shall be collected a special school tax of fifty cents on each one hundred dollars worth of taxable property in St. Clair County, the proceeds of which shall be used exclusively for public school purposes; provided, the time the tax is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the county and voted for by a majority of those voting at such election."

As required by said amendment, the time the tax was to continue and the purpose thereof was submitted to the qualified electors of St. Clair County in the election held for that purpose on May 15, 1951. At such election a majority of the qualified electors of said county voted that the tax collector of St. Clair County should collect the special school tax "annually for a period of Twenty (20) years, beginning October 1, 1951."

In an opinion of this office rendered on August 18, 1949, and found in Quarterly Report of Attorney General, Vol. 56, page 34, it was held that the special county hospital tax authorized by Amendment No. LXXII to the Constitution, upon being authorized by a vote of the electors of the county as required by said amendment, and levy having been made by the county governing body as provided by law on the Second Monday in February, 1949, should be collected for the tax year ending September 30, 1949. In this opinion, it was stated.

"Under our statutes, the process of assessment for the tax year 1949 began upon October 1, 1948. As of that day, owners are to make their returns, values are to be fixed and the taxes laid. Likewise, by virtue of Title 51, Section 884, Code of Alabama 1940, there is created an in-

choate lien upon the property as of the tax day, a lien which is be effective for the amount of the taxes for the ensuing year as fixed by the defined statutory method. Such 'statutory scheme' has been upheld by the Supreme Court of the United States in the case of U. S. v. State of Alabama, 313 U. S. 274, 61 S. Ct. 1011, 85 L. Ed. 1327; Quarterly Report of Attorney General, Vol. 31, page 5."

The question presented by your inquiry is similar to the question considered in the above opinion. The only difference (which I do not think material) is that under Amendment LXXII the county governing body was required to levy the tax; while under Amendment No. LXXVII, here under consideration, the tax was levied by the amendment. The reasoning used and conclusion reached in that opinion are equally applicable to the question here under consideration.

It is, therefore, my opinion that the tax should be collected beginning October 1, 1951, based on assessments made for the tax year 1951, which, as required by law, were made during the assessing period beginning October 1, 1950.

Very truly yours,

SI GARRETT

Attorney General

June 27, 1951

Hon. Lee Bains

Attorney for City

City of Bessemer

Bessemer, Alabama

Municipalities — Salaries — Insurance — Employer and Employees.

Municipalities are not authorized to pay hospital insurance premiums for employees who are indefinitely absent from duty on account of serving in the Armed Forces.

Opinion by Assistant Attorney General Parker.

Dear Sir:

Your request for an official opinion, bearing date of January 15, 1951, is as follows:

"The Board of Commissioners of the City of Bessemer, Alabama, have received a request from International Association of Fire Fighters, which is a local union of employees of the fire department of the city of Bes-

semer, Alabama, that is as follows: 'We the members of Local 980 hereby request the Commission of Bessemer, Alabama, to keep the Blue Cross Hospital insurance of any man in force who goes into the Armed Forces to protect our country.'

"It would be appreciated if you would advise us if it would be a legal expenditure for the Commission of the City of Bessemer to authorize payment of Hospital insurance for firemen and their dependents who are called into the Armed Forces of the United States while such employee is absent from duty and engaged in the defense of our country."

It is my opinion that your inquiry must be answered in the negative.

Act No. 208, General Acts 1947, page 69, and Act No. 376, General Acts 1947, page 267 (which acts are identical), authorize governing bodies of municipal corporations to contract for and maintain group policies of hospital insurance of its officers and employees. See Quarterly Report of Attorney General, Vol. 55, page 105. Dependents of such officers and employees may not be included in such policies. Were it not for Acts No. 208 and No. 376, supra, municipalities would not be empowered to participate in insurance plans for their employees. **Richards v. Wheeler,** 51 Pac. 2d 436 10 Cal. App. 2d 108.

Neither firemen, nor those claiming under them, have any right except that conferred by the statutes or ordinances creating such plans, and the Legislature has the power to attach such conditions as it sees proper to allow one to obtain the benefits provided. 62 C. J. S., Municipal Corporations, Section 614, citing, **Board of Trustees of Firemen's Relief and Pension Fund of the City of Stuttgart v. Buerkle,** 97 S. W. 2d 914, 193 Ark. 157. To be entitled to the benefits, the claimant must meet the prescribed conditions. 62 C. J. S., Municipal Corporations, Section 727.

A municipal employee has been defined as one engaged in the services of the municipality. 62 C. J. S., Municipal Corporations, Section 701. It is my opinion that a fireman is an employee within the meaning of Acts Nos. 208 and 376, supra. **State ex rel., Hyland v. Baumhaver,** 12 So. 2d, 326. 244 Ala. 1, cert. den. 12 So. 2d 342, 244 Ala. 71; **Cobbs v. Home Ins. Co. of N. Y.,** 18 Ala. App. 206, 91 So. 627, cert. den. **Ex parte Home Ins. Co.,** 207 Ala. 712, 91 So. 922.

However, a municipal employee is not entitled to compensation for the time during which he is on leave in the absence of an agreement which must conform to the governing statutes. 62 C. J. S. Municipal Corporations, Section 721.

In my opinion, the word "employee" as used in Acts Nos. 208 and 376, supra, contemplates a person actively engaged in the services of the municipality, and not one on an indefinite leave of absence. I know of no authority of law other than Title 35, Section 12, Code of Alabama 1940, and Section 11 of Act No. 161, General Acts 1945, page 205 (Title 35, Section 215, 1949 Cumulative Pocket Part, Code of Alabama 1940) (limiting military leave to twenty-one days), which would allow a municipality to continue to pay salaries or other benefits to an employee who is absent from duty for an indefinite length of time, even though he is in the service of his country. Cf. Quarterly Report of Attorney General, Vol. 27, page 72; Quarterly Report of Attorney General, Vol. 52, page 88.

Yours very truly,

SI GARRETT

Attorney General.

June 27, 1951

Hon. Jesse W. Owens, Sheriff

Etowah County

Gadsden, Alabama

Intoxicating Liquors — Condemnation Proceedings — Bonds — Forfeitures.

1. The fact that an automobile is seized for carrying prohibited liquors on a second occasion, after it has first been seized on a prior occasion, and a forthcoming bond made under the provisions of Title 29, Section 249, Code of Alabama 1940, does not in and of itself forfeit the bond in the first case.

2. A forthcoming bond made by the defendant in a condemnation proceedings against an automobile for transporting prohibited liquors is not forfeited unless a judgment of condemnation is entered and the defendant fails within fifteen days to deliver the property to the sheriff. Title 29, Section 249, Code of Alabama 1940.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of May 31, 1951, is as follows:

"We have recently had an automobile seized by this office in violation of Sections 247 and 248 of Title 29 of the Code of Alabama. A bond was made by the defendant for the automobile and while the condemnation proceedings were pending and while the automobile was in the dependent's possession by virtue of the bond, it was seized again on the same violation.

"I would like to know whether or not the second seizure of this automobile forfeits the bond taken on the first seizure."

I am of the opinion that your inquiry should be answered in the negative; that is to say, a second seizure of the same vehicle for transporting prohibited liquors does not in and of itself cause a bond made under the provisions of Title 29, Section 249, Code of Alabama 1940, on a prior occasion, to be forfeited.

According to the facts in your inquiry, the automobile was seized by the sheriff for transporting prohibited liquors, under the provisions of Title 29, Section 247, Code of Alabama 1940, as amended by Act No. 129, General Acts 1947, page 39, and Section 248 of said Title; and the defendant eexcuted a forthcoming bond, as provided in Section 249, supra, so that said defendant could keep possession of the automobile pending the condemnation proceedings. This forthcoming bond prescribed by Section 249, supra, is "conditioned that in the event the said property is condemned," the said defendant will deliver the same to the sheriff within fifteen days from the date of such judgment of condemnation.

Your inquiry does not state that in the first suit the automobile was condemned. The only way that the bond filed in the first suit can be forfeited is for the automobile to be condemned and for the defendant to fail to deliver the automobile to the sheriff within fifteen days after the judgment of condemnation.

The fact that the automobile was again seized for transporting prohibited liquors does not breach the condition of the bond filed in the first suit. Of course, the bond filed in the first suit would not be sufficient to allow the defendant to retain the possession of the automobile pending the second suit. The first bond applies only to the first condemnation proceedings; and if the defendant is to retain possession of the automobile, he would be required to file another bond pending the second condemnation proceeding.

Yours very truly,

SI GARRETT

Attorney General.

June 27, 1951

Hon. J. M. McCullough, Jr., Director

Department of Corrections and Institutions

State of Alabama

C A P I T O L

Department of Corrections and Institutions — State and State Departments.

The statutes dealing with public printing and binding do not prohibit state departments from using mimeograph, multigraph, multilith, or duplicating machines for making forms and other office supplies used by said departments.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of May 24, 1951, is as follows:

"I would like to request that you render this department an official opinion on the legality of using mimeograph, multigraph, multilith or duplicating machines for forms and other printed matter used by this department.

"In this connection, I refer you to a letter dated January 20, 1942 from Thomas S. Lawson, Attorney General, addressed to Honorable John

D. Petree, Director of the Department of Industrial Relations; also to a letter dated October 18, 1937 from A. A. Carmichael addressed to the Unemployment Compensation Commission."

The letters referred to in your inquiry were not published as official opinions, but were nevertheless opinions of the Attorney General concerning the use of mimeograph, multigraph, multilith, or duplicating machines. These letters demonstrate that at least since October, 1937, this office has held that there is no legal objection to the use of such machines by state departments. I am of the opinion that the conclusions in said letters are correct, and that there is no objection to your department, or any other state department, using mimeograph, multigraph, multilith, or duplicating machines for making forms and other office supplies.

The statutes dealing with public printing and binding provide for the printing of certain state documents. It is my opinion that these statutes were never intended by the Legislature to encroach upon the discretion of a department head to prescribe the form and composition of the blank forms and office supplies used by his department. It is a well known fact that many state departments have used some of the types of machines described in your inquiry for a number of years. In fact, the use of such machines in the preparation of blank forms and other office supplies may be said to have become essential to the functioning of the state departments. In my opinion, it would be unreasonable to hold that the use of such mimeograph, multigraph, multilith, or duplicating machines by state departments is prohibited by law.

Of course, certain documents that must be printed with type must be ordered through the printer holding a state contract. There are many forms and office supplies used by your department and other state departments which are not required to be printed; and in my opinion, they may be reproduced by the use of the machines referred to in your inquiry.

Yours very truly,

SI GARRETT

Attorney General

June 27, 1951

Hon. Howard Kirby

Clerk of the Circuit Court

Etowah County

Gadsden, Alabama

Fine and Forfeiture Fund — Clerks of Circuit Courts — Etowah County — Costs and Fees.

It is the duty of the clerk of the circuit court of Etowah County, who is paid on a salary basis under the provisions of Act No. 631, Local Acts 1947, page 401, to file claims against the fine and forfeiture fund of said county for the fees of circuit clerks which are payable from said fund, and to pay the amount of such fees into the county treasury.

Opinion by Assistant Attorney General Galloway.

Dear Sir:

Your request for an official opinion, bearing date of April 10, 1951, is as follows:

"Please refer to Local Act 631, Pages 401-402 of the Local Acts of 1947, regarding the placing of the Circuit Clerk of Etowah County on a salary basis, and render to me your opinion on the following matter.

"Is there any legal requirements for me as Clerk of Circuit Court to file claims on the Fine and Forfeiture Fund of Etowah County for Clerk's fees and then endorse them over to Etowah County General Fund since the County Treasurer (or Board of Revenue) is required to make transfer of any balance on hand at end of the fiscal year of Fine and Forfeiture Fund in excess of registered claims and lawful claims or charges against said fund to General Fund or to any special fund by resolution of the Board of Revenue as provided in Section 34, Title 12 of the 1940 Code of Alabama?"

Your inquiry should be answered in the affirmative.

Sections 1 and 2 of Act. No. 631, Local Acts 1947, page 401, provide as follows:

"Section 1. That the salary or compensation of the Clerk of the Circuit Court of Etowah County, Alabama, shall be Four Thousand Five Hundred and 00/100 Dollars ($4,500.00) per year, which said Four Thousand Five Hundred and 00/100 Dollars ($4,500.00) annual SALARY OR COMPENSATION SHALL BE PAID OUT OF THE County Treasury of Etowah County, in equal monthly installments, at the end of each month upon warrants drawn in the same manner as employees of Etowah County are paid.

"Section 2. That when and after this Act goes into effect, said Clerk of the Circuit Court of Etowah County, hereinabove referred to, shall

continue to collect all legal charges, costs, fees, compensation and allowances heretofore or hereafter authorized to be collected by him, and shall pay same into the County Treasury on the first Monday of each month thereafter, provided, however, that all witness fees, judgments and amounts collected by him in civil and criminal cases, from whatsoever source, except fees, allowances, legal charges, costs and compensation payable to him as such Clerk, shall be retained in the hands of said Clerk to be paid out and disbursed by him to proper persons or parties in the manner now or hereafter required by law."

Your attention is called to that specific part of Section 2, supra, pertinent to your inquiry, which provides that the clerk **"shall continue to collect all** legal charges, costs, **fees,** compensation and allowances **heretofore or hereafter authorized to be collected by him."** (Emphasis supplied).

Title 15, Section 393, Code of Alabama 1940, authorizes the county treasurer to pay the fees of clerks and other officers of the court from the fine and forfeiture fund in certain criminal cases when there is a surplus in said fund.

Title 11, Section 88, Code of Alabama 1940, provides for the manner of payment of the fees of officers of the court from the fine and forfeiture fund.

The court in **Wilson v. Acuff,** 18 Ala. App. 327, 92 So. 81, pointed out that Section 6889, Code of Alabama 1923 (Section 393, supra), was designed to relieve some officers from the "rather harsh rule of service without reward". This, of course, refers to officers paid on a fee basis, and it would seem that this section would have no bearing on an officer paid on a salary basis by the county. Regardless of the reason for this section, however, the legislature has provided that the Clerk of the Circuit Court of Etowah County shall collect all fees authorized to be collected by him. Since you are authorized to collect certain fees from the fine and forfeiture fund of Etowah County, these fees should be collected by you.

Title 12, Section 34, Code of Alabama 1940, authorizes the board of revenue or court of county commissioners under certain conditions to transfer any surplus in the fine and forfeiture fund to the general fund of a county but it is not mandatory that they do so. By filing claims for your fees against the fine and forfeiture fund of the county and then paying these fees into the county treasury, as required by law, you are thereby providing revenue for the general fund, which revenue the general fund may not otherwise receive.

I am, therefore, of the opinion that you, as Circuit Clerk of Etowah County, should file a claim against the fine and forfeiture fund for all fees you would be entitled to collect from said fund, if you were not on a salary basis, and then cover the same into the general fund.

Yours very truly,

SI GARRETT

Attorney General

June 27, 1951

Hon. E. P. McRee, Administrator,

Alabama Alcoholic Beverage Control Board,

Montgomery 2, Alabama.

Alabama Alcoholic Beverage Control Board— Refunds.

1. The so-called "malt and brewed beverages tax," becomes due when the licensee (wholesale dealer) receives such beverages in this State.

2. The Alabama Alcoholic Beverage Control Board is authorized to make refunds on revenue stamps, crowns, or lids by which payment of the tax is evidenced, when the same are attached to malt and brewed beverages on which the tax has not become due.

3. Quarterly Report of Attorney General, Vol. 52, page 165, overruled and withdrawn.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion bearing date of March 20, 1951, is as follows:

"Under date of June 30, 1948, we requested an official opinion which reads as follows:

" 'It has been the policy of the Alabama Alcoholic Beverage Control Board to grant refunds of the Alabama tax on malt and brewed beverages in instances where the Board believed such refunds were in order and just.

" 'Refunds authorized by the Board are in various categories, and we list below illustrations of each type of refund.

" '1. A brewery purchases a taxpaid certificate for 10,000 gross of Alabama taxpaid crowns, and after using one-half of that amount on beer shipped into Alabama ceases to make shipments into this State, and the Alabama taxpaid crowns are returned to the crown manufacturer and restored to his stock, or destroyed, then a refund is made for the unused portion of the Alabama tax.

" '2. A shipment is made by a licensed brewery to a wholesale distributor in a far removed state from Alabama, said shipment bearing Alabama taxpaid crowns. Upon receipt of affidavit to the effect that this mistake was made, and also to the effect that the beer was received in another state, and said beer sold and distributed through trade channels of that state, then a refund is authorized to the brewery for the amount of Alabama tax involved.

"'3. A shipment of beer is made to a licensed wholesaler in Alabama, said merchandise having affixed thereto Alabama taxpaid stamps and, upon arrival or a short time thereafter, said merchandise is condemned and ordered destroyed by Federal authorities as unfit for human consumption, upon receipt of the proper papers showing that same has been destroyed, a refund is made for the amount of Alabama tax involved.

"'4. On shipments of beer to Alabama wholesalers, the railroad companies furnish affidavits in triplicate to the effect that they have reimbursed the wholesaler for the amount of beer broken in transit, less the Alabama tax. Upon completion of these papers, then a refund is authorized to the wholesaler for the amount of Alabama tax involved.

"'5. In the process of bottling a certain quantity of Alabama taxpaid crowns are mulitated and thereby causing the brewery to lose not only the Alabama tax but also the cost paid by such brewery for the manufacture of the crowns. In this instance a refund is authorized upon the submission of affivadits by the brewery attesting to the number of crowns spoiled.

"'6. In some instances crowns are returned to the crown manufacturer by the brewery because they are damaged and unfit for use. In such instances, upon receipt of properly executed papers by the brewery and the crown manufacturer to whom these crowns are returned, a refund check is authorized in this instance.

"'It will be appreciated very much if you will advise us as soon as possible if the Board has the authority to make refunds in the future in cases as outlined above.

"'In order to assist you in arriving at your decision we are enclosing a copy of the contract executed by the crown manufacturer, a copy of the contract executed by the breweries and an official taxpaid certificate No. 2628 marked "Specimen Copy" which is used to release taxpaid crowns for the crown manufacturer to the brewery after the Alabama tax had been paid.

"'We are also enclosing a copy of the monthly reports required of the crown manufacturer, brewery and wholesaler. These reports are carefully checked by the accounting department who give us an accurate check on the amount of tax due, etc.'

"On August 20, 1948 the Attorney General held that the Alabama Alcoholic Beverage Control Board did not have authority to make refunds of any type, and subsequently a suit was instituted by a wholesaler in Alabama for a refund on the procedure as outlined in paragraph 4 above.

"The court held that the ABC Board could not make a refund to the wholesale distributor due to two technicalities, viz: that the tax was paid into the treasury by the brewery and not by the wholesale distributor, and that the voucher had not been signed by the Governor, and to authorize payment would be a conflict of the law.

"It will be appreciated very much if you will review the opinion rendered by the former Attorney General and, in the event you hold that the ABC Board has authority to make refunds, we would like for you to advise if the Board would be authorized to make refunds to the brewery

instead of the wholesale distributor for the tax involved on beer broken in transit. The brewery then could credit the wholesale distributor involved."

The opinion to you under date of August 20, 1948, appearing in Quarterly Report of Attorney General, Vol. 52, page 165, which you have requested me to review, held that the Alabama Alcoholic Beverage Control Board was without authority to refund malt or brewed beverage taxes levied under the provisions of Title 29, Section 43, Code of Alabama 1940, and Act No. 358, General Acts 1945, page 757. This opinion was based on the theory that the refunds were for taxes which had been voluntarily paid, and there being no statutory authority for refund, such taxes could not be refunded.

It is without question that taxes which have been voluntarily paid connot be refunded in the absence of statutory authority. However, after a careful review of the opinion referred to above, it is my opinion that the conclusions reached therein are in error, except as to the third situation presented in your inquiry of June 30, 1948, which inquiry you have set out at length in your request of March 30, 1951, here being considered.

It is my conclusion that it is necessary to consider at what point the Alabama tax on malt or brewed beverages becomes due and payable. This was not done in the opinion here under review, which opinion proceeded only on the theory that the taxes had been paid.

Taxes on malt and brewed beverages are imposed by Title 29, Section 43, Code of Alabama 1940, and by Act No. 358, General Acts 1945, page 575.

Section 43, supra, is as follows:

"In addition to all other taxes now imposed by law and in addition to the licenses provided for in this chapter, there is hereby levied a **license or privilege tax** on every **person** licensed under this chapter **who sells or stores, or receives for the purpose of distribution** to any person, firm, corporation, club or association within the State of Alabama, any malt or brewed beverages as defined in this chapter, which shall be measured by and graduated in accordance with the volume of sales of such person, and which said tax shall be collected by the alcoholic beverage control board, and shall be one-half cent on each twelve fluid ounces or fractional part thereof" (Emphasis supplied.)

Act No. 358, supra, in part, is as follows:

"Section 1. In addition to all other taxes now imposed by law and in addition to the licenses provided for in Title 29 of the 1940 Code, of Alabama, there is hereby levied a **license or privilege tax** on every **person** licensed under the provisions of Title 29 of the 1940 Code of Alabama who **sells, stores, or receives for the purpose of distribution** to any person, firm, corporation, club, or association within the State of Alabama any malt or brewed beverages as defined in Section 1 of Title 29 of the 1940 Code of Alabama which shall be measured by and graduated in accordance with the volume of sales of such person and shall be one-half cent on each twelve fluid ounces or fractional part thereof.

"Section 2. The tax herein levied shall be collected by the Alcoholic Beverage Control Board in the same manner as other taxes and licenses are collected by it. When collected, the proceeds of the tax shall be paid into the State Treasury to be divided and distributed equally, on

or before the 15th day of each calendar month, to the sixty-seven counties of the State." (Emphasis supplied.)

The Alabama Alcoholic Beverage Control Board is made the tax collection agency for this tax by the provisions of Title 29, Section 42, Code of Alabama 1940, which reads, in pertinent part, as follows:

". . . The alcoholic beverage control board is authorized and directed to collect all licenses and taxes levied herein, accruing from the sale, distribution, receipt or storing for the purpose of sale within this state, any and all malt and vinous beverages hereinafter enumerated and defined."

Thus, the tax on malt and brewed beverages is a tax on the **licensee (wholesale dealer)** for the **privilege of selling or storing, or receiving for the purpose of distribution, malt and brewed beverages within the State of Alabama.** The amount of the tax is determined by the volume of business done, measured by units of twelve fluid ounces.

Therefore, until the beverages are in the actual possession of the licensee, there can be no tax liability imposed upon such licensee. It must be remembered that the tax is not imposed on the beverage itself, but on the licensee desiring to handle such beverages. Thus, malt and brewed beverages consigned to dealers within this State do not give rise to tax liability until they are received in this State by the licensee who will sell, store, or distribute them.

This reasoning is not in conflict with the express intention of the legislature as set forth in Title 29, Section 58, Code of Alabama 1940, which reads, in pertinent part, as follows:

". . . It is the intention and purpose of this chapter to require all manufacturers and other persons as herein provided to affix stamps, crowns, or lids as will be prescribed by the board to all original containers in which alcoholic beverages are normally placed and prepared for market, received, sold or handled, before such beverages are sold, offered for sale, or held for sale within this state."

In order to carry out this express intention, it was provided in Title 29 that the board shall design stamps, crowns, or lids to be affixed to alcoholic beverages, and shall require brewers to affix them to beer sold within the State (Section 57); that every wholesale dealer shall, before shipping any of the articles taxed in Title 29, Chapter 1, Code of Alabama 1940, to any dealer in this State or for sale in this State, have affixed the requisite amount of stamps, crowns, or lids (Section 61); and that it shall be unlawful to transport malt or brewed beverages into this State unless tax stamps are affixed (Section 36)(9).

These provisions were inserted under the police power of the State, and were designed to carry out the purpose of the law as set forth in Title 29, Section 2, Code of Alabama 1940, which reads, in pertinent part, as follows:

"(a) This chapter shall be deemed an exercise of the police power of the State of Alabama for the protection of the public welfare, health, peace and morals of the people of the state, and to prohibit forever the open saloon; and all of the provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

"(b) Except as herein otherwise expressly provided, the purpose of this chapter is to prohibit transactions in liquor and alcohol, and malt or brewed beverages, which take place wholly within the State, except by and under the control of the board, as herein specifically provided, and every section and provision of this chapter shall be construed accordingly. . . . "

Although the payment of the tax levied under this chapter is evidenced by the use of Alabama revenue stamps, crowns, or lids which must be affixed prior to the entry of the beverages into the State, the tax itself does not accrue until the beverages are in the possession of the licensee. Prior to the receipt of the beverages by the licensee, the Alabama revenue stamps, crowns, or lids are in the nature of a "Certificate of Compliance" required under the police power of the State, and show that the provisions of the law have been followed. In order to comply with the Alabama statutes discussed, supra, a brewer must buy and affix stamps prior to the entry of the beverages into the State. However, the legislature, recognizing that it is not always possible to affix stamps prior to the entry into the State, provided that unstamped beverages within the State must be stamped within designated time limits. See Title 29, Sections 46, 47, and 49, Code of Alabama 1940.

It is, therefore, concluded that at any time prior to the receipt of the beverages in this State by the licensee, at which time the tax becomes due and the attached Alabama revenue stamps, crowns, or lids become evidence that it has been paid, refunds may be made for those revenue stamps, crowns, or lids which have not been used to evidence payment of Alabama taxes.

The authority to make such refunds or to honor such claims is contained in the provisions of Title 29, Section 9, Code of Alabama 1940, as amended by Act No. 391, General Acts 1943, page 361, which reads, in pertinent part, as follows:

" ' All claims against said monies received under the provisions of this chapter shall be first audited and approved by the board or its designated agency, and all such claims so audited and approved by the said board or designated agency must then be audited and approved by the state comptroller and the governor before being paid . . . ."

Under the provisions of Title 29, Section 6, Code of Alabama 1940, the board may make rules and regulations governing such refunds as it deems necessary.

Answering your specific inquiries, it is my opinion:

(1) That the board has authority to make refunds to the brewery in the instances numbered 1, 2, 5, and 6.

(2) That the board does not have authority to make refunds to the wholesaler in the instance numbered 4, for the reason that the wholesaler has paid nothing to the board which could be refunded to him. However, refunds in such instance may be made to the brewery making the shipment and the payment to the board. The subsequent reimbursement of the wholesaler by the brewery, which should, and no doubt will, be made, is a matter between them, with which the board is not concerned.

(3) The board does not have authority to make refunds in the instance numbered 3, because at the time of the receipt of the malt or brewed beverages in this State by the licensed wholesaler the tax became due and pay-

able. The subsequent destruction of the beverages would not relieve the wholesaler of the tax liability imposed upon him for the privilege of selling, storing, or receiving for the purpose of distribution such beverages in Alabama.

In view of the above, the opinion under date of August 20, 1948, appearing in Quarterly Report of Attorney General, Vol. 52, page 165, is hereby overruled and withdrawn.

The case of **Bay Distributing Co. v. John Graves, as State Comptroller,** in the Circuit Court of Montgomery County, Alabama, No. 11780, referred to in your inquiry, involved a mandamus proceeding brought by the Bay Distributing Company, a licensed Alabama wholesale dealer of malt and brewed beverages, against the State Comptroller. The petition alleged that shipments of malt or brewed beverages from the brewery in Wisconsin, with Alabama revenue stamps affixed to each bottle, contained, among said shipments, 1920 bottles broken in transit. The petitioner sought a mandamus against the comptroller ordering him to audit and approved a claim in the amount of $19.20, the amount of revenue stamps affixed to the bottles broken in transit.

This case was not appealed. The judgment entry recites that the writ was denied on the following grounds:

(1) That there was no statutory authority for payment of this type of claim.

(2) That it did not appear that petitioner itself had paid into the State Treasury or the Alabama Alcoholic Beverage Control Board the sum sought to be recovered.

(3) That the claim had not been approved by the Governor as provided by law.

It is my understanding that grounds 2 and 3 were the substantial grounds on which the writ was denied. The court did not pass on the authority generally of the board to make refunds.

I agree with the courts action in denying the writ; and there is nothing in this opinion in conflict with the holding in that case.

Yours very truly,

SI GARRETT

Attorney General

June 28, 1951

Hon. N. J. Bell, 3rd

Chairman, The Water Works Board

City of Montgomery

Montgomery, Alabama

Municipalities — Contractors — Public Utilities.

The Water Works Board of the City of Montgomery is a "municipal board" within the meaning of that term as used in Section 13 of Act. No. 492, General Acts 1947, page 338, and under the provisions of said section is relieved from complying with the provisions of Act No. 492, supra.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of June 27, 1951, is as follows:

"The Water Works Board of the City of Montgomery is a corporation organized pursuant to the provisions of Title 37, Section 394, et seq. of the Code of Alabama of 1940. In March 1950 the water works properties of the City of Montgomery were transferred to said corporation, and said Board is now operating the water works system of this city, making repairs, improvements and expansions.

"The Alabama Road Builders Association has raised the question that this Board comes under Title 50 of the 1940 Code of Alabama, and must conform with the provisions of said code. They have especially called the Board's attention to Chapter 1 of said Title 50.

"The Board would appreciate from you a ruling on the following question:

"1. Does said Water Works Board of Montgomery, a corporation, come under Title 50 of the 1940 Code of Alabama, Section 15(1), Chapter 1, as amended by the Acts of 1947; or is said Board excluded under the provisions of Section 15(13), as amended by the Acts of 1947?

"An early replay to this request will be appreciated by us."

Title 50, Chapter 1 (Sections 1-15, inclusive), Code of Alabama 1940, was repealed by Act No. 492, General Acts 1947, page 338.

Section 13 of Act No. 492, supra, is in part as follows:

"The term 'person' in this Chapter shall include natural persons, partnerships and corporations. The term 'awarding authority' shall include the State Highway Department, the State Building Commission, and the State Docks Commission, the State Board of Education and all

the State agencies of the State of Alabama, **but shall not include** any county board of education or other county or **municipal officers or board."** (Emphasis supplied.)

In an opinion of this office rendered to you under date of June 26, 1951 (Ms.), it was held that:

> The Water Works Board of the City of Montgomery, a corporation organized pursuant to Title 37, Section 394, Code of Alabama 1940, as amended by Act No. 686, General and Local Acts 1949, page 1057, is a subdivision of a municipal corporation within the meaning of Title 50, Section 16, Code of Alabama 1940, requiring contractors with such subdivisions to enter into a performance bond for the completion of public works.

In an opinion of this office under date of March 2, 1939, and found in Quarterly Report of Attorney General, Vol. 14, page 166, a city water works board was held "to be a governmental agency of a city."

In view of the holdings of the above opinions, it is my conclusion that the Water Works Board of the City of Montgomery (the "awarding authority" in the instant case) is a "municipal board" within the meaning of that term as used in Section 13, supra.

Specifically answering your inquiry, it is my opinion that the Water Works Board of the City of Montgomery is relieved by Section 13, supra, from complying with provisions of Act No. 492, supra.

Yours very truly,

SI GARRETT

Attorney General

INDEX

QUARTERLY REPORT OF ATTORNEY GENERAL

April 1, 1951, Through June 30, 1951

VOLUME 63

ACTS (GENERAL AND LOCAL):

LOCAL ACTS, EX. SESS. 1936:

Page 14 10

GENERAL ACTS 1939:

Page 1050 27

GENERAL ACTS 1943:

Page 89 62

LOCAL ACTS 1943:

Page 78 20

GENERAL ACTS 1945:

Page 1 51
Page 531 37
Page 570, as amended 17
Page 575 95
Page 727 35

GENERAL ACTS 1947:

Page 62 44
Page 336 58
Page 338 (Sec. 13) 101
Page 525 17

LOCAL ACTS 1947:

Page 181 9
Page 401 93

GENERAL AND LOCAL ACTS 1949:

Page 115 5
Page 230 46
Page 835 40
Page 1026 74

GENERAL ACTS, SP. SESS., 1951:

No. 14 80

INDEX
(Continued)

—A—

ADOPTION:

Adult person — Investigation and recommendation by Welfare Department not necessary 82
Minor child — Boy 19, though married, may not adopt 82

AD VALOREM TAXES:

Assessment of building against individual taxpayer through error — Should be cancelled and assessed to corporation 5
Industrial plants in existence prior to application — May not be granted exemption from 83
Veneer mill operating lathes cutting veneer — Entitled to exemption from 83

AGRICULTURE AND INDUSTRIES:

Commissioner as member of State Milk Control Board — Same powers and duties as other members 38

ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD:

Attorney — May engage without regard to Merit System 32
Malt and brewed beverage tax—Refund on revenue stamps 95

APPROPRIATIONS:

Conservation Department — Entire amount for construction of canal from Gulf to Little Lagoon may be spent to improve Perdido Pass 53
Medical College — University of Alabama — Balance of amount appropriated to commission to establish may not be paid to University 62

ATTORNEYS:

Alabama Alcoholic Beverage Control Board — May engage without regard to Merit System 32
License — City may restrict exemption to first year of practice 76

—B—

BAIL:

Bond required by Title 51, Sec. 201, as amended, must be approved by probate judge in each county 46

BONDS:

Automobile carrying intoxicating liquors — Seized second time — Does not forfeit bond in first seizure 90
Bail — Bond required by Title 51, Sec. 201, as amended, must be approved by probate judge in each county 46
Contractor with water works board on public works — Must furnish 59

INDEX

(Continued)

—C—

CHEROKEE COUNTY:

Sheriff — Expenses for automobile limited to $100 per month by Local Acts 1943, p. 78 20

CLERKS OF CIRCUIT COURTS:

Etowah County — Fine and Forfeiture Fund — Duty to file claims against 93

On salary basis — Must issue executions promptly against successful plaintiff if execution against defendant returned no property found 77

CODE OF ALABAMA 1940:

Title 2:
Sections 115-133 48

Title 8:
Section 86, as amended 74

Title 11:
Section 7 77
Section 22 57
Section 27 57

Title 12:
Sections 33, 34 24

Title 14:
Section 283 84

Title 15:
Section 394 55

Title 17:
Section 68 14

Title 22:
Section 190 31
Section 207 38

Title 23:
Section 43 23

Title 29:
Section 5 32
Section 43 95
Section 247, as amended 90
Section 248 90

Title 37:
Section 394, as amended 57
Section 404 72

Title 41:
Section 221 26

Title 42
Section 16 12

INDEX

(Continued)

Title 45:
Section 17 79
Section 30 79

Title 50:
Section 16 57

Title 51:
Sections 1-7, as amended 83
Section 25 5
Section 201, as amended 46
Section 460 76
Section 476, as amended 48
Section 693 65

Title 55:
Section 334 7

CONSERVATION, DEPARTMENT OF:

Appropriation for construction of canal from Gulf to Little Lagoon—Entire amount may be used to improve Perdido Pass 53

Hunting and fishing license — Person serving in armed forces during Korean conflict — Exempt from 35

May purchase material and lands from corporation of which Director is a stockholder 26

Raccoons and o'possums — May be hunted at night only with light 74

CONTRACTS:

City water works board is a "municipal board" within meaning of Section 13, General Acts 1947, p. 333 101
Highway Department — Director may cancel by mutual agreement with contractor 61

COOPERATIVES:

Agricultural — Not exempt from license when engaged in business not authorized by statue 48

CORONERS:

Election — Proper time for 14
No candidate at time of holding election creates vacancy — Filled by Governor 14

CORPORATIONS:

Assessment of building against individual taxpayer through error — Should be cancelled and assessed to corporation 5

INDEX

(Continued)

Conservation Department may purchase material and lands from corporations of which Director is a stockholder 26

CORRECTIONS AND INSTITUTIONS, DEPARTMENT OF:

Mimeograph, multigraph, multilith, or duplicating machines — May be used for making office forms 91

Machine records containing requisite information and data — Sufficient compliance with statue 79

COSTS AND FEES:

Circuit clerk on salary basis — Must issue executions promptly against successful plaintiff if execution against defendant returned no property found 77

Clerk circuit court — Etowah County —— Fine and forfeiture fund — Duty to file claims against 93

Registers — Condemned automobile — Receiving fee for sale — Not entitled 5% under Title 11, Sec. 22 57

Sheriffs — Fees in justice court — May include in claiming circuit court fees from fine and forfeiture fund 55

Sheriffs — Mileage under General Acts 1947, p. 62— Discussed generally 44

COUNTIES:

Etowah — Automobile for members of board of revenue — May purchase and maintain for official business 9

Franklin — Local Acts, Ex. Sess. 1936, p. 14, does not affect authority of county to issue gasoline tax warrants under general law 10

Gasoline tax anticipation warrants — Proceeds — Use of 68

Gasoline tax anticipation warrants — Minutes and resolution relating to sale of — May be amended 68

Indigent, sick, or wounded persons — May appropriate funds for care of 31

Machinery to maintain motor vehicles — May purchase on prorata basis with county board of education 23

Red Cross first aid books — May purchase for distribution 80

Road and Bridge Fund — Gasoline Fund — Reimbursement to general fund for funds improperly expended from 63

COUNTY BOARD OF EDUCATION:

Machinery to maintain school busses — May purchase on prorata basis with county 23

Negligence of employees — Not liable for 7

Person injured through negligence of employee of — May claim damages before Board of Adjustment 7

INDEX
(Continued)

—D—

DALE COUNTY:

Fine and forfeiture fund — Surplus may be transferred to general fund or special fund under Title 12, Sec. 34 24

—E—

ELECTIONS:

Coroners — Proper time for 14

EMPLOYEES' RETIREMENT SYSTEM:

Jefferson County — H. B. 477, Regular Session, 1951, if passed, dissolves existing retirement system 37

ETOWAH COUNTY:

Automobiles for members of Board of Revenue — County may purchase and maintain for official business 9
Clerk circuit court — Claims against fine and forfeiture fund — Duty to file 93

EXECUTIONS:

Circuit clerk on salary basis — Must issue executions promptly against successful plaintiff if execution against defendant returned no property found 77

EXEMPTIONS:

Agriculture cooperatives — Not exempt from when engaged in business not authorized by statute 48

Hunting and fishing license — Person serving in armed forces during Korean conflict — Exempt from 35

Industrial plants in existence prior to application — May not be granted 83

Veneer mill operating lathes cutting veneer — Entitled to tax exemption 83

Veterans — Licenses — Exemption under General Acts 1945, p. 570, as amended — Extends until "definitive treaty of peace" 17

Veterans — Licenses — Exemption under General Acts 1945, p. 570, as amended — Veteran claiming need not be resident of county where claimed 17

Veterans — Licenses — Exemption under General Acts 1945, p. 570, as amended — Period of time 17

Veterans — Licenses — Exemption under General Acts 1945, p. 570, as amended — Not transferable 17

Veterans — Licenses — Exemption under General Acts 1945, p. 570, as amended — May apply to payment of two or more licenses 17

Veterans — Commercial fishing license — May claim exemption under General Acts 1945, p. 570, as amended 17

INDEX
(Continued)

—F—

FINE AND FORFEITURE FUND:
Dale County — Surplus may be transferred to general fund or special fund under Title 12, Sec. 34 24
Circuit Clerk Etowah County—Duty to file claim against 93

FRANKLIN COUNTY:
Gasoline tax warrants — Local Acts, Ex. Sess. 1936, p. 14, does not affect authority of county to issue under general law 10

FUNDS:
Oil and Gas — Appropriation may be made from to Interstate Oil Compact Commission 51
Road and Bridge — Gasoline — Reimbursement to general fund for funds improperly expensed from 68

—G—

GAME AND FISH:
Hunting and fishing license — Person serving in armed forces during Korean conflict — Exempt from 35
Raccons and o'possums — May be hunted at night only with light 74

GAMING AND LOTTERIES:
Slot machines — Contraband — May be seized at private social corporation 84

GASOLINE:
Gasoline tax anticipation warrants — Proceeds — Use of 68
Gasoline tax anticipation warrants — Minutes and resolution relating to sale of — May be amended 68

—H—

HEALTH AND HEALTH DEPARTMENT:
House trailer parked on rented lot — Responsibility for complying with municipal sanitary ordinance 29
House trailer — When same is "dwelling" within municipal sanitary ordinance 29
License under General and Local Acts 1949, p. 835 — Hospital subject to 40

HIGHWAYS AND HIGHWAY DEPARTMENT:
Contract — Director may cancel by mutual agreement with contractor 61
Roadside parks — May secure additional right of way to establish 56

HOSPITALS:
License under General and Local Acts 1949, p. 835 — Hospitals subject to 40

—I—

INFANTS:
Adoption — Boy 19, though married, may not adopt 82

INSURANCE:
Hospital — Municipality may not pay premiums on employee in armed forces 88

INDEX
(Continued)

INTOXICATING LIQUORS:

Automobile carrying — Seized second time — Does not forfeit bond in first seizure 90

—J—

JEFFERSON COUNTY:

Retirement system created by Acts 1945, p. 531, dissolved if H. B. 477, Reg. Sess. 1951, is passed 37

—L—

LICENSES:

Agricultural cooperatives — Not exempt from when engaged in business not authorized by statute 48
Attorney — City may restrict exemption to first year of practice 76
Hospitals subject to under General & Local Acts 1949, p. 835 40
Hunting and fishing licenses — Person serving in armed forces during Korean conflict — Exempt from 35
Motor vehicle — Tag purchased in Mississippi by non-resident — Does not exempt purchaser in Alabama under reciprocal agreement with Mississippi 27
Motor vehicles — Nonresident military personnel — License tax — Expiration — May not purchase on monthly basis 65
Veterans — Exemption under General Acts 1945, p. 570, as amended — Veteran claiming need not be resident of county where claimed 17
Veterans — Exemption under General Acts 1945, p. 570, as amended — Extends until "definitive treaty of peace" 17
Veterans — Commercial fishing license — May claim exemption under General Acts 1945, p. 570, as amended 17
Veterans — Exemption under General Acts 1945, p. 570, as amended — May apply to payment of two or more licenses 17
Veterans—Exemption under General Acts 1945, p. 570, as amended — Not transferable 17
Veterans—Exemption under General Acts 1945, p. 570, as amended — Period of time 17

—M—

MERIT SYSTEM:

Alabama Alcoholic Beverage Control Board — May engage attorney without regard to 32

MILK CONTROL BOARD:

Commissioner of Agriculture & Industries member of — Same powers and duties as other members 38

MOTOR VEHICLES:

Nonresident military personnel — License tag — Expiration — May not purchase on monthly basis 65
Tag purchased in Mississippi by nonresident — Does not exempt purchaser in Alabama under reciprocal agreement with Mississippi 27

MUNICIPALITIES:

Attorneys — Licenses — May restrict exemption to first year of practice 76
Hospital insurance premiums — May not pay on employees absent in armed forces 88
House trailer — When same is "dwelling" within municipal sanitary ordinance 29

INDEX
(Continued)

House trailer parked on rented lot — Responsibility for complying with municipal sanitary ordinance 29
Mayor — Cities under 6,000 — Vote as member of council discretionary — If voting results in tie, must cast second vote 72
Water mains — Installation is a "public work" — Contractor must make performance bond 59
Water Works Board is a "municipal board" within meaning of Section 13, General Acts 1947, p. 333 101
Water Works Board — Subdivision of a municipality — Must require bond on contractor on public works 59

—O—

OFFICERS & OFFICES:
Commissioner of Agriculture & Industries member of Milk Control Board — Same powers and duties as other members 38
Coroners — Proper time for election 14
Coroners — No candidate at time of holding election creates vacancy — Filled by Governor 14

OIL AND GAS:
Interstate Oil Compact Commission — Appropriation may be made to from Oil and Gas Fund 51

OPINIONS OVERRULED, MODIFIED & DISTINGUISHED:
Quarterly Report, Vol. 52, p. 165 95
Quarterly Report, Vol. 59, p. 110 40

—P—

PARDONS, PAROLES & PROBATION:
Loose leaf book meets requirements of Title 42, Sec. 16 12

PAUPERS:
Sick or wounded — County may appropriate funds for care of 31

PUBLIC WELFARE DEPARTMENT:
Adoption of adult person — Investigation and recommendation by — Not necessary 82
Minor child — Boy 19, though married, may not adopt 82

—R—

RECORDS:
Pardon and Parole Board — Looseleaf book meets requirements of Title 42, Sec. 16 12

REFUNDS:
Malt and brewed beverage tax — Refund on revenue stamps 95

REGISTERS:
Condemned automobile — Receiving fee for sale — Not entitled to 5% under Title 11, Sec. 22 57

RIGHT OF WAY:
Roadside parks — Highway Department may secure additional right of way to establish 56

—S—

SCHOOLS:
County Board of Education — Person injured through negligence of employee of — May claim damages before Board of Adjustment 7
County Board of Education — Not liable for negligence of employees 7

SLOT MACHINES:
Contraband — May be seized at private social corporation 84

INDEX
(Continued)

SHIRIFFS:
Cherokee County — Expenses for automobile limited to $100 per month by Local Acts 1943, p. 78 20
Fees in justice court — May include in claiming circuit court fees from fine and forfeiture fund 55
Mileage under General Acts 1947, p. 62 — Discussed generally 44

ST. CLAIR COUNTY:
School tax under Amendment No. 77 — Collectible beginning October 1, 1951 86

STATE BOARD OF ADJUSTMENT:
County Board of Education — Person injured through negligence of employee of — May claim damages before 7

—T—

TAXATION:
Corporations — Assessment of building against individual taxpayer through error — Should be cancelled and assessed to corporation .. 5
Industrial plants in existence prior to application — May not be granted exemption from 83
St. Clair County — Special school tax under Amendment No. 77 — Collectible beginning October 1, 1951 86
Veneer mill operating lathes cutting veneer — Entitled to exemption from 83

TRAILERS:
House trailer — When same is "dwelling" within municipal sanitary ordinance 29
House trailer parked on rented lot — Responsibility for complying with municipal sanitary ordinance 29

—U—

UNIVERSITY OF ALABAMA:
Medical College — Balance of amount appropriated to Commission to establish may not be paid to 62

—V—

VETERANS:
Commercial fishing license — May claim exemption under General Acts 1945, p. 570, as amended 17
Licenses — Exemption under General Acts 1945, p. 570, as amended — Extends until "definitive treaty of peace" 17
Licenses — Exemption under General Acts 1945, p. 570, as amended —Veteran claiming need not be resident of county where claimed 17
Licenses — Exemption under General Acts 1945, p. 570, as amended — May apply to payment of two or more licenses 17
Licenses — Exemption under General Acts 1945, p. 570, as amended — Not transferable 17
Licenses — Exemption under General Acts 1945, p. 570, as amended — Period of time 17

—W—

WARRANTS:
Gasoline tax — Franklin County — Local Acts, Ex. Sess., 1936, p. 14, does not affect authority of county to issue under general law 10